

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(1) INTRODUCTION/(i) Legislation governing Registration/A.  
PAST LEGISLATION/801. In general.

## **LAND REGISTRATION (**

### **1. REGISTRATION OF TITLE TO LAND**

#### **(1) INTRODUCTION**

##### **(i) Legislation governing Registration**

#### **A. PAST LEGISLATION**

##### **801. In general.**

Successive statutes<sup>1</sup> have marked the historical development of a system of conveyancing known as registered conveyancing, which reached some form of maturity with the Land Registration Act 1925 and other real property legislation of the same year<sup>2</sup>.

1 The process of registration started with the Land Registry Act 1862 which marked the first attempt to introduce registration of title as distinct from the previous very limited system of registration of deeds by memorial. There followed the Land Transfer Acts 1875 and 1897, the latter Act introducing for the first time the principle of compulsory registration and providing an insurance fund out of which to indemnify persons suffering loss by reason of a mistake in the register. The preamble of the Land Registry Act 1862 stated that '...it is expedient to give certainty to the title to real estates and to facilitate the proof thereof and also to render the dealing with land more simple and economical...'. These aims for the system to be reliable, simple and economical continued with the Land Registration Act 1925 and with the current Land Registration Act 2002 (see PARA 804 et seq post). As to the repeal of the Land Registry Act 1862 and the custody of records of title under that Act see the Land Registration Act 2002 s 122.

2 As to the other Acts forming part of that legislation see the Law of Property Act 1922 (see REAL PROPERTY), the Administration of Estates Act 1925 (see EXECUTORS AND ADMINISTRATORS), the Land Charges Act 1925 (see now the Land Charges Act 1972; and LAND CHARGES), the Law of Property Act 1925 (see LANDLORD AND TENANT; REAL PROPERTY), the Settled Land Act 1925 (see SETTLEMENTS), and the Trustee Act 1925 (see TRUSTS).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(1) INTRODUCTION/(i) Legislation governing Registration/A.  
PAST LEGISLATION/802. Legislation referable to a centrally maintained register.

##### **802. Legislation referable to a centrally maintained register.**

A key aspect of land registration legislation has been the manner in which the law and practice of conveyancing was adapted to the use of a centrally maintained register of title<sup>1</sup> to land.

The essence of the legislation, in respect of registered land, was to produce on first registration a state insured record of entitlement to legal estates in land which was to be kept up to date in respect of subsequent transactions in accordance with the conveyancing technique for which the legislation provided.

1 As to the register of title see PARA 811 et seq post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(1) INTRODUCTION/(i) Legislation governing Registration/A. PAST LEGISLATION/803. The previous land registration legislation.

### **803. The previous land registration legislation.**

Until the commencement of the Land Registration Act 2002<sup>1</sup>, the main statute relating to land registration was the Land Registration Act 1925, which was extended and amended by the Land Registration Act 1936, the Land Registration Act 1966, the Land Registration and Land Charges Act 1971, the Land Registration Act 1986, the Land Registration Act 1988, the Land Registration Act 1997 and various other statutes.

The Land Registration Act 1925 was a consolidating enactment extending to England and Wales<sup>2</sup>, which applied not only to land first registered under its provisions but also with some qualifications<sup>3</sup> to land registered under any enactment which it replaced<sup>4</sup>.

1 See PARA 804 et seq post. As to the repeal of the former legislation see the Land Registration Act 2002 s 135, Sch 13.

2 'England' means, subject to any alteration of the boundaries of local government areas, the area consisting of the counties established by the Local Government Act 1972 s 1 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 24), and Greater London and the Isles of Scilly: Interpretation Act 1978 s 5, Sch 1. 'Wales' means the combined area of the counties which were created by the Local Government Act 1972 s 20 (as originally enacted) (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 37), but subject to any alteration made under s 73 (as amended) (consequential alteration of boundary following alteration of watercourse) (see LOCAL GOVERNMENT vol 69 (2009) PARA 90): Interpretation Act 1978 Sch 1 (definition substituted by the Local Government (Wales) Act 1994 s 1(3), Sch 2 para 9). As to local government areas see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; and as to boundary changes see LOCAL GOVERNMENT vol 69 (2009) PARA 56 et seq. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

3 Eg subject to necessary alteration of the register in accordance with post-1925 law: see the Land Registration Act 1925 s 2(1) (repealed).

4 See *ibid* s 2(2) (repealed) and for the enactments repealed by the 1925 Act see s 147, Schedule (repealed).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(1) INTRODUCTION/(i) Legislation governing Registration/B. CURRENT LEGISLATION/804. Background.

## ***B. CURRENT LEGISLATION***

### **804. Background.**

The system of land law in England and Wales is the result of an evolutionary process over many centuries, legislation being introduced when the need arose<sup>1</sup>. This piecemeal development has however created uncertainty<sup>2</sup> and there has been a need for general reform as far back as the Land Registry Act 1862<sup>3</sup>. That need accelerated with the passage of time and the demands of modern home ownership. The Land Registration Act 2002 is the result of this movement for reform and of the joint efforts of the Law Commission and the Land Registry<sup>4</sup>.

It is intended that there should be a system of complete registration of title throughout England and Wales, and the underlying aim is for reliability, simplicity and an economical process<sup>5</sup>. Other factors behind the legislation include the need to create a framework for electronic conveyancing ('e-conveyancing')<sup>6</sup>, and the reform of the law of adverse possession as it relates to registered land<sup>7</sup>.

1 See also PARAS 801-803 ante.

2 See *Ashburn Anstalt v Arnold* [1989] Ch 1 at 26D per Fox LJ: 'In matters relating to the title of land, certainty is of prime importance'.

3 As to the Land Registry Act 1862 see PARA 801 note 1 ante.

4 The Law Commission, with the assistance of HM Land Registry, in September 1998 issued a consultative document entitled *Land Registration for the Twenty-first Century* (Law Com no 254) (1998). This was as a result of the growth in demand for electronic conveyancing, the fact that the legislation was unclear and complicated, and because at least 80% of all property titles were registered (compared to the 1925 position when the majority of titles were unregistered). Recommendations included: (1) the simplification of the methods for protecting rights over land such as easements and covenants and the enhancement of the strength of the protection; (2) the reduction of the number and scope of overriding interests as a means of increasing the security of registered titles; (3) the review and clarification of the status and definition of estates, rights and interests; and (4) the introduction of a rule-making power to make possible a system of electronic conveyancing. The 1998 report was followed by another joint report, entitled *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001), containing a draft Bill and a detailed commentary on the Bill's provisions. This Bill became the Land Registration Act 2002 (see PARA 805 post).

5 See PARA 801 note 1 ante.

6 As to electronic conveyancing see PARA 1049 et seq post.

7 As to adverse possession see PARA 1021 et seq post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(1) INTRODUCTION/(i) Legislation governing Registration/B.  
CURRENT LEGISLATION/805. Land Registration Act 2002.

## **805. Land Registration Act 2002.**

The Land Registration Act 2002<sup>1</sup> repealed the Land Registration Act 1925 and associated legislation<sup>2</sup>. The fundamental objective of the Land Registration Act 2002 is that the register<sup>3</sup> should be a complete and accurate reflection of the state of the title at any given time, and the Act (inter alia) provides a legal framework enabling the introduction of a system of electronic conveyancing<sup>4</sup>.

The Land Registration Act 2002: (1) continues to provide for a register of title to estates in land, and explains what interests can be the subject of title registration<sup>5</sup>; (2) specifies who is entitled to apply voluntarily for first registration of a title<sup>6</sup>, defines when an application must be made and on whom the duty to make it lies, defines the titles in freehold and leasehold land which may be registered and the effects of registration<sup>7</sup>, and provides cautions against further registration<sup>8</sup>; (3) defines the powers of an owner of registered land and who can exercise them, makes provision to protect disponees from the effect of limits on powers which are not the subject of an entry in the register, defines the dispositions of registered land which must be registered<sup>9</sup>, and lays down rules about the effect of dispositions on the priority of interests affecting registered land<sup>10</sup>; (4) provides for the registration of third party rights against registered titles by means of notices in the register, and for the entry of restrictions which limit the circumstances in which an entry in the register may be made in respect of a disposition of registered land without the approval of the registrar or a court<sup>11</sup>; (5) makes provision about the

relative priority of charges on registered land and about powers and duties of chargees<sup>12</sup>; (6) makes provision about the effects of registration of title, alteration of the register<sup>13</sup>, public access to the register<sup>14</sup>, procedures for priority periods during which the rights of intended buyers can be protected, and makes provision for a right to object<sup>15</sup> to applications to the registrar and for the reference of disputes about applications to the adjudicator<sup>16</sup>; (7) makes special provision for a number of cases, including various matters relating to the Crown<sup>17</sup>, and the treatment of pending actions, writs, orders and deeds of arrangement, including bankruptcy petitions and orders<sup>18</sup>; (8) enables dispositions to be made by means of documents in electronic form, enables an electronic network to be set up to carry out functions related to registration, and provides for circumstances in which conveyancers may be required to use electronic means to complete and register transactions simultaneously<sup>19</sup>; (9) introduces a new regime for dealing with adverse possession in relation to certain registered interests<sup>20</sup>; (10) makes provision about the Land Registry, including the conduct of business and fees<sup>21</sup>; (11) establishes a new independent officer to determine disputes between individual parties relating to land registration, and provides for the regulation of proceedings before him<sup>22</sup>; and (12) enables specific provision to be made for a number of rights in land, and other miscellaneous and general provisions.

1 The provisions of the Land Registration Act 2002 which had not already been brought into force came into effect on 13 October 2003, except for s 98(1) (see PARA 1045 post) and Sch 6 para 5(4), (5) (see PARAS 1029, 1045 post) which came into force on 13 October 2004: see the Land Registration Act 2002 (Commencement No 4) Order 2003, SI 2003/1725.

2 See the Land Registration Act 2002 s 135, Sch 13; and PARA 803 ante.

3 As to the register of title see PARA 811 et seq post.

4 See PARA 1049 et seq post. The ultimate aim is that investigation of title to land will take place online with very few if any other searches.

5 As to interests capable of registration see PARAS 823-824 post.

6 As to first registration see PARA 826 et seq post.

7 As to effects of registration see PARA 859 et seq post.

8 As to cautions and the cautions register see PARA 854 et seq post.

9 As to dispositions of registered land see PARA 906 et seq post.

10 As to effects on priority see PARA 934 et seq post.

11 As to notices and restrictions see PARA 992 et seq post.

12 As to charges over registered land see PARA 943 et seq post.

13 As to alteration of the register see PARA 976 et seq post.

14 As to inspection of the register etc see PARA 1095 et seq post.

15 As to the right to object see PARAS 858, 1004, 1081 post.

16 As to the reference of disputes to the adjudicator see PARA 1169 et seq post.

17 The Land Registration Act 2002 binds the Crown: s 129.

18 As to pending land actions, writs, orders and deeds of arrangement see PARA 1019 et seq post.

19 As to electronic conveyancing see PARA 1049 et seq post.

20 As to adverse possession see PARA 1021 et seq post.

21 As to the Land Registry see PARA 1064 et seq post.

22 As to the adjudicator see PARA 1146 et seq post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(1) INTRODUCTION/(i) Legislation governing Registration/B. CURRENT LEGISLATION/806. Subordinate legislation.

### **806. Subordinate legislation.**

There is scope for a considerable amount of subordinate legislation under the Land Registration Act 2002<sup>1</sup>. This includes orders<sup>2</sup>, regulations for conduct of business<sup>3</sup>, rules in regard to electronic conveyancing<sup>4</sup>, and rules and regulations in regard to the new office of adjudicator<sup>5</sup>, but perhaps the most important of all are the Land Registration Rules 2003<sup>6</sup>, which cover a great range of matters and perform a similar function to the Land Registration Rules 1925<sup>7</sup> made under the Land Registration Act 1925<sup>8</sup>.

Particular rules of the Land Registration Rules 2003 are considered at appropriate parts of this title.

1 As to the Land Registration Act 2002 generally see PARA 805 ante.

2 As to subordinate legislation under the Land Registration Act 2002 generally see PARA 1124 post.

3 See PARAS 1069, 1124 post.

4 See PARA 1049 et seq post.

5 See PARA 1149 et seq post.

6 I.e. the Land Registration Rules 2003, SI 2003/1417, which came into force on the same day as the Land Registration Act 2002 s 1 (ie 13 October 2003): see the Land Registration Rules 2003, SI 2003/1417, r 1; and PARA 805 note 1 ante. See further PARAS 1125-1133 post.

7 I.e. the Land Registration Rules 1925, SR & O 1925/1093 (revoked).

8 As to the Land Registration Act 1925 and other past legislation in the area of land registration see PARAS 801-803 ante.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(1) INTRODUCTION/(ii) Interaction with other Systems of Registration/807. Land charges and local land charges registers.

## **(ii) Interaction with other Systems of Registration**

### **807. Land charges and local land charges registers.**

Generally, the provisions of the Land Charges Act 1972<sup>1</sup> requiring registration under that Act of pending actions, writs, orders, deeds of arrangement and land charges do not apply to registered land<sup>2</sup> if protection under the Land Registration Act 2002 by means of an entry on the register of title<sup>3</sup> is available<sup>4</sup>. A purchaser of registered land is not concerned to search the index<sup>5</sup> maintained under the Land Charges Act 1972<sup>6</sup>.

However, it appears that a petition in bankruptcy<sup>7</sup> must be registered as a land charge under the Land Charges Act 1972 in the register of pending actions<sup>8</sup>. Similarly local land charges must be registered under the Local Land Charges Act 1975<sup>9</sup>.

When an instrument executed on or after 27 July 1971 which is required by the land registration legislation to be registered under the compulsory provisions for first registration<sup>10</sup> creates a land charge registrable under the Land Charges Act 1972 affecting the estate to be registered, the land charge cannot be registered under that Act<sup>11</sup>.

1 As to the Land Charges Act 1972 see LAND CHARGES vol 26 (2004 Reissue) PARA 601 et seq.

2 For the meaning of 'registered land' see PARA 939 note 1 post; definition applied by the Land Charges Act 1972 s 17(1) (amended by the Land Registration Act 2002 s 133, Sch 11 para 10(1), (4)).

3 As to the register of title see PARA 811 et seq post.

4 See the Land Charges Act 1972 s 14(1) (amended by the Land Registration Act 2002 Sch 11 para 10(1), (2)); and LAND CHARGES vol 26 (2004 Reissue) PARAS 601, 605.

5 As to the index see LAND CHARGES vol 26 (2004 Reissue) PARA 607.

6 See Land Registry Practice Guide 34 *Personal Insolvency* para 3.5, which states this general rule albeit in the context of protection against the vendor's insolvency.

7 See the Land Registration Act 2002 s 86; and PARA 1014 post.

8 See the Land Charges Act 1972 s 5(1)(b); and LAND CHARGES vol 26 (2004 Reissue) PARA 647.

9 See the Local Land Charges Act 1975 s 5; and LAND CHARGES vol 26 (2004 Reissue) PARA 689.

10 See the Land Registration Act 2002 ss 6-7; and PARAS 828-829 post.

11 See the Land Charges Act 1972 s 14(3) (amended by the Land Registration Act 2002 Sch 11 para 10(1), (3)); and LAND CHARGES vol 26 (2004 Reissue) PARAS 601, 605, 616.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(1) INTRODUCTION/(ii) Interaction with other Systems of Registration/808. Common land and town or village green registers.

### **808. Common land and town or village green registers.**

If the registration authority<sup>1</sup> is notified by the Chief Land Registrar<sup>2</sup> that land which is registered under the Commons Registration Act 1965<sup>3</sup> has been registered at the Land Registry<sup>4</sup>, the authority must amend the registration of ownership under the Commons Registration Act 1965 in the prescribed manner<sup>5</sup>. No rights of common<sup>6</sup> over land which is capable of being registered under the Commons Registration Act 1965 may be registered under the land registration legislation<sup>7</sup>.

1 As to the registration authority see the Commons Registration Act 1965 s 2(1) (as amended); and COMMONS vol 13 (2009) PARA 506 et seq.

2 As to the Chief Land Registrar see PARA 1066 post.

3 As to the requirements and effects of registration under the Commons Registration Act 1965 see COMMONS vol 13 (2009) PARA 506 et seq.

4 Ie under the land registration legislation: see PARA 826 et seq post. As to the Land Registry see PARA 1064 et seq post.

5 See the Commons Registration Act 1965 s 12 (as amended); and COMMONS vol 13 (2009) PARA 512.

6 For the meaning of 'rights of common' see *ibid* s 22(1); COMMONS vol 13 (2009) PARA 405.

7 See *ibid* s 1(1) (as amended); and COMMONS vol 13 (2009) PARA 506.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(1) INTRODUCTION/(ii) Interaction with other Systems of  
Registration/809. Companies register.

## **809. Companies register.**

Registration pursuant to the Companies Act 1985<sup>1</sup> of a charge by a company does not of itself, if the charge affects registered land<sup>2</sup>, afford protection for the security<sup>3</sup>. An appropriate entry on the register of title<sup>4</sup> is necessary<sup>5</sup> in addition to compliance with the statutory provisions governing registration of charges created by companies<sup>6</sup>.

1 *Ie* pursuant to the Companies Act 1985 ss 395-399 (as amended; prospectively substituted); see COMPANIES vol 15 (2009) PARA 1279 *et seq*.

2 As to charges under the Land Registration Act 2002 see Pt 5 (ss 48-57); and PARA 943 *et seq post*. For the meaning of 'registered land' see PARA 939 note 1 *post*.

3 Cf the Land Charges Act 1972 s 3(7), (8) (as amended; prospectively substituted); and LAND CHARGES vol 26 (2004 Reissue) PARAS 606, 697.

4 As to the register of title see PARA 811 *et seq post*.

5 In the future there may be links electronically between the Land Registry and Companies House; the Land Registration Act 2002 s 121 allows for rules to be made regarding the transmission of information by the Land Registry to the Companies Registry (see PARA 1124 note 12 *post*). As to the Land Registry see PARA 1064 *et seq post*.

6 The statutory provisions referred to in the text are the Companies Act 1985 ss 395-399 (as amended; prospectively substituted) (see COMPANIES vol 15 (2009) PARA 1279 *et seq*).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(2) THE REGISTER/(i) In general/810. Requirement to keep  
register of title.

## **(2) THE REGISTER**

### **(i) In general**

#### **810. Requirement to keep register of title.**

There is to continue to be<sup>1</sup> a register of title<sup>2</sup> kept by the Chief Land Registrar<sup>3</sup>. Rules<sup>4</sup> may make provision about how the register is to be kept<sup>5</sup> and may, in particular, make provision about:

- 1 (1) the information to be included in the register<sup>6</sup>;
- 2 (2) the form in which information included in the register is to be kept<sup>7</sup>; and
- 3 (3) the arrangement of that information<sup>8</sup>.

- 1 The Land Registration Act 2002 continues the requirement to keep a register under previous legislation. As to the previous legislation relating to land registration see PARA 801-803 ante.
- 2 As to the register of title see PARA 811 et seq post.
- 3 Land Registration Act 2002 s 1(1). As to the Chief Land Registrar see PARA 1066 post.
- 4 As to land registration rules generally see PARA 1125 post.
- 5 Land Registration Act 2002 s 1(2).
- 6 Ibid s 1(2)(a).
- 7 Ibid s 1(2)(b).
- 8 Ibid s 1(2)(c).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(2) THE REGISTER/(ii) The Register of Title/811. Form and arrangement of the register of title.

## **(ii) The Register of Title**

### **811. Form and arrangement of the register of title.**

The register of title<sup>1</sup> may be kept in electronic or paper form, or partly in one form and partly in the other<sup>2</sup>. Subject to the rules relating to individual registers<sup>3</sup>, the register of title will include an individual register for each registered estate<sup>4</sup> which is:

- 4 (1) an estate in land<sup>5</sup>; or
- 5 (2) a rentcharge, franchise, manor or a profit à prendre in gross,

vested in a proprietor<sup>6</sup>.

- 1 'Register' means the register of title, except in the context of cautions against first registration (see PARA 849 et seq post): Land Registration Act 2002 s 132(1). As to the requirement that a register of title is kept see PARA 810 ante.
- 2 Land Registration Rules 2003, SI 2003/1417, r 2(1).
- 3 See subject to ibid r 3: see PARA 812 post.
- 4 For the meaning of 'registered estate' see PARA 861 note 3 post.
- 5 As to the meaning of 'land' see PARA 826 note 4 post.
- 6 Land Registration Rules 2003, SI 2003/1417, r 2(2).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(2) THE REGISTER/(ii) The Register of Title/812. Individual registers and more than one registered estate; division and amalgamation.



## **812. Individual registers and more than one registered estate; division and amalgamation.**

The Chief Land Registrar<sup>1</sup> may include more than one registered estate<sup>2</sup> in an individual register<sup>3</sup> if the estates are of the same kind and are vested in the same proprietor<sup>4</sup>.

On first registration<sup>5</sup> of a registered estate, the registrar may open an individual register for each separate area of land affected by the proprietor's registered estate as he designates<sup>6</sup>. Subsequently, the registrar may open an individual register for part of the registered estate in a registered title and retain the existing register for the remainder:

- 6 (1) on the application of the proprietor of the registered estate and of any registered charge<sup>7</sup> over it; or
- 7 (2) if he considers it desirable for the keeping of the register of title; or
- 8 (3) on the registration of a charge of part of the registered estate comprised in the registered title<sup>8</sup>.

The registrar may amalgamate two or more registered titles, or add an estate which is being registered for the first time to an existing registered title, if the estates are of the same kind and are vested in the same proprietor:

- 9 (a) on the application of the proprietor of the registered estate and of any registered charge over it; or
- 10 (b) if he considers it desirable for the keeping of the register of title<sup>9</sup>.

Where the registrar has divided a registered title under head (2) above or amalgamated registered titles or an estate on first registration with a registered title under head (b) above, he must notify the proprietor of the registered estate and of any registered charge, unless they have agreed to such action<sup>10</sup>.

He may make a new edition of any individual register or make entries on any individual register to reflect its division or amalgamation<sup>11</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 For the meaning of 'registered estate' see PARA 861 note 3 post.

3 'Individual register' is the register so named in the Land Registration Rules 2003, SI 2003/1417, r 2 (see PARA 811 ante), the contents and arrangement of which are described in r 3 and r 4 (see PARA 813 post): r 217(1).

4 Ibid r 3(1).

5 As to first registration see PARA 826 et seq post.

6 Land Registration Rules 2003, SI 2003/1417, r 3(2).

7 For the meaning of 'registered charge' see PARA 861 note 8 post.

8 Land Registration Rules 2003, SI 2003/1417, r 3(3).

9 Ibid r 3(4).

10 Ibid r 3(5)(a).

11 Ibid r 3(5)(b).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(2) THE REGISTER/(ii) The Register of Title/813.  
Arrangement of individual registers.

### **813. Arrangement of individual registers.**

Each individual register<sup>1</sup> must have a distinguishing number, or series of letters and numbers, known as the title number<sup>2</sup>. An entry in an individual register may be made by reference to a plan or other document, in which case the Chief Land Registrar<sup>3</sup> must keep the original or a copy of the document<sup>4</sup>.

Each individual register consists of a property register<sup>5</sup>, a proprietorship register<sup>6</sup> and, where necessary, a charges register<sup>7</sup>.

Whenever the registrar considers it desirable, he may make a new edition of any individual register so that it contains only the subsisting entries, rearrange the entries in the register, or alter its title number<sup>8</sup>.

1 For the meaning of 'individual register' see PARA 812 note 3 ante.

2 Land Registration Rules 2003, SI 2003/1417, rr 4(1), 217(1).

3 As to the Chief Land Registrar see PARA 1066 post.

4 Land Registration Rules 2003, SI 2003/1417, r 4(3).

5 As to the property register see PARA 814 post.

6 As to the proprietorship register see PARA 815 post.

7 Land Registration Rules 2003, SI 2003/1417, r 4(2). As to the charges register see PARA 816 post.

8 Ibid r 4(4).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(2) THE REGISTER/(ii) The Register of Title/814. Contents of the property register.

### **814. Contents of the property register.**

The property register<sup>1</sup> of any registered estate<sup>2</sup> must contain a description of the registered estate which, in the case of a registered estate in land<sup>3</sup>, rentcharge or registered franchise which is an affecting franchise<sup>4</sup> must refer to a plan based on the Ordnance Survey map and known as the 'title plan'<sup>5</sup>. It must also contain, where appropriate, details of:

- 11 (1) the inclusion or exclusion of mines and minerals in or from registration<sup>6</sup>;
- 12 (2) easements, rights, privileges, conditions and covenants benefiting the registered estate and other similar matters<sup>7</sup>;
- 13 (3) all exceptions arising on enfranchisement of formerly copyhold land<sup>8</sup>; and
- 14 (4) any other matter required to be entered in any other part of the register which the registrar considers may more conveniently be entered in the property register<sup>9</sup>,

and such other matters as are required by the rules<sup>10</sup> to be entered in the property register<sup>11</sup>.

The property register of a registered leasehold estate must also contain sufficient particulars of the registered lease to enable that lease to be identified<sup>12</sup>. If the lease contains a provision that prohibits or restricts dispositions of the leasehold estate, the Chief Land Registrar<sup>13</sup> must make an entry in the property register stating that all estates, rights, interests, powers and remedies arising on or by reason of a disposition made in breach of that prohibition or restriction are excepted from the effect of registration<sup>14</sup>.

The property register of a registered estate in a rentcharge, franchise or profit à prendre must, if the estate was created by an instrument, also contain sufficient particulars of the instrument to enable it to be identified<sup>15</sup>.

1 'Property register' is the register so named in the Land Registration Rules 2003, SI 2003/1417, r 4 (see PARA 813 ante), the contents of which are described in rr 5, 6 and 7 (see the text and notes 2-15 infra): r 217(1).

2 For the meaning of 'registered estate' see PARA 861 note 3 post.

3 As to the meaning of 'land' see PARA 826 note 4 post.

4 'Affecting franchise' means a franchise which relates to a defined area of land and is an adverse right affecting or capable of affecting the title to an estate or charge: Land Registration Rules 2003, SI 2003/1417, r 217(1).

5 Ibid r 5(a). As to boundaries see PARA 869 et seq post. As to the Ordnance Survey see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1110 et seq.

6 Ibid r 5(b)(i). As to inclusion or exclusion of mines and minerals from the registration see r 32; and PARA 848 post. See also rr 70-71; and PARA 848 post. As to the meaning of 'mines and minerals' see PARA 826 note 4 post.

7 Ibid r 5(b)(ii).

8 Ibid r 5(b)(iii). As to copyhold enfranchisement see CUSTOM AND EXCISE vol 12(1) (Reissue) PARA 643; REAL PROPERTY vol 39(2) (Reissue) PARA 31 et seq.

9 Ibid r 5(b)(iv).

10 Ie required by the Land Registration Rules 2003, SI 2003/1417: r 5 (c).

11 Ibid r 5(c).

12 Ibid r 6(1).

13 As to the Chief Land Registrar see PARA 1066 post.

14 Land Registration Rules 2003, SI 2003/1417, r 6(2).

15 Ibid r 7.

## UPDATE

### 814 Contents of the property register

TEXT AND NOTES--SI 2003/1417 rr 5-7 amended: SI 2008/1919.

TEXT AND NOTES 13, 14--This is now subject to SI 2003/1417 r 72A(3) (see PARA 912): r 6(2) (amended by SI 2005/1982).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(2) THE REGISTER/(ii) The Register of Title/815. Contents of the proprietorship register.

### **815. Contents of the proprietorship register.**

The proprietorship register<sup>1</sup> of any registered estate<sup>2</sup> must contain, where appropriate:

- 15 (1) the class of title<sup>3</sup>;
- 16 (2) the name of the proprietor of the registered estate including, where the proprietor is a company registered under the Companies Acts<sup>4</sup> or a limited liability partnership<sup>5</sup>, its registered number<sup>6</sup>;
- 17 (3) an address for service of the proprietor of the registered estate<sup>7</sup>;
- 18 (4) restrictions<sup>8</sup>;
- 19 (5) notices relating to a pending bankruptcy action<sup>9</sup>;
- 20 (6) positive covenants by a transferor or transferee and indemnity covenants by a transferee<sup>10</sup>;
- 21 (7) details of any modification<sup>11</sup> of the covenants implied under certain provisions<sup>11</sup> of the Land Registration Act 2002<sup>12</sup>;
- 22 (8) details of any modification<sup>13</sup> of the covenants implied under the Law of Property (Miscellaneous Provisions) Act 1994<sup>14</sup>; and
- 23 (9) any other matters required by the rules<sup>15</sup> to be entered in the proprietorship register<sup>16</sup>.

On first registration and on a subsequent change of proprietor, the Chief Land Registrar<sup>17</sup>, whenever practicable, must enter in the proprietorship register the price paid or value declared; this entry must remain until there is a change of proprietor or some other change in the register of title which the registrar considers would result in the entry being misleading<sup>18</sup>.

1 'Proprietorship register' is the register so named in the Land Registration Rules 2003, SI 2003/1417, r 4 (see PARA 813 ante), the contents of which are described in r 8 (see the text and notes 2-16 infra): r 217(1).

2 For the meaning of 'registered estate' see PARA 861 note 3 post.

3 Land Registration Rules 2003, SI 2003/1417, r 8(1)(a). As to classes of title see PARA 834 et seq post.

4 'The Companies Acts' means the Companies Act 1985, any Act amending or replacing that Act and any former enactment relating to companies: Land Registration Rules 2003, SI 2003/1417, r 217(1). See further COMPANIES.

5 I.e. a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000 (see PARTNERSHIP vol 79 (2008) PARA 234 et seq):

6 Land Registration Rules 2003, SI 2003/1417, r 8(1)(b). See also r 8(1)(i).

7 Ibid r 8(1)(c). As to the address for service see r 195; and PARA 1099 post.

8 Ibid r 8(1)(d). The restrictions referred to in the text are those under the Land Registration Act 2002 s 40 (see PARA 1005 post) and s 86(4) (see PARA 1014 post).

9 Land Registration Rules 2003, SI 2003/1417, r 8(1)(e). The notices referred to in the text are those under the Land Registration Act 2002 s 86(2) (see PARA 1014 post).

10 Land Registration Rules 2003, SI 2003/1417, r 8(1)(f). The covenants referred to in the text are covenants entered under r 64 or r 65 (see PARAS 967-968 post).

11 I.e. any modification entered under ibid r 66 (see PARA 974 post).

12 Land Registration Rules 2003, SI 2003/1417, r 8(1)(g). The provisions referred to in the text are those of the Land Registration Act 2002 Sch 12 para 20(2)-(3).

13 Is any modification entered under the Land Registration Rules 2003, SI 2002/1417, r 67(6) (see PARA 969 post).

14 Ibid r 8(1)(h). As to the covenants implied under the Law of Property (Miscellaneous Provisions) Act 1994 see SALE OF LAND vol 42 (Reissue) PARAS 349-351.

15 Is required by the Land Registration Rules 2003, SI 2003/1417.

16 Ibid r 8(1)(j).

17 As to the Chief Land Registrar see PARA 1066 post.

18 Land Registration Rules 2003, SI 2003/1417, r 8(2).

## UPDATE

### 815 Contents of the proprietorship register

NOTE 1--SI 2003/1417 r 217(1) amended: SI 2008/1919.

NOTE 6--SI 2003/1417 r 8(1)(i) revoked: SI 2008/1919. The registrar need not retain in the register any entry made under SI 2003/1417 r 8(1)(i) or an equivalent entry made under the Land Registration Act 1925: Land Registration (Amendment) Rules 2008, SI 2008/1919, r 6.

TEXT AND NOTES 17, 18--SI 2003/1417 r 8(2) substituted: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(2) THE REGISTER/(ii) The Register of Title/816. Contents of the charges register.

### 816. Contents of the charges register.

The charges register<sup>1</sup> of any registered estate<sup>2</sup> must contain, where appropriate:

- 24 (1) details of leases, charges and any other interests which adversely affect the registered estate subsisting at the time of first registration of the estate or created thereafter<sup>3</sup>;
- 25 (2) any dealings with the interests or matters referred to in head (1) above or affecting their priority which are capable of being noted on the register<sup>4</sup>;
- 26 (3) sufficient details to enable any registered charge to be identified<sup>5</sup>;
- 27 (4) the name of the proprietor of any registered charge including, where the proprietor is a company registered under the Companies Acts<sup>6</sup> or a limited liability partnership<sup>7</sup>, its registered number<sup>8</sup>;
- 28 (5) an address for service of the proprietor of any registered charge<sup>9</sup>;
- 29 (6) restrictions relating to a registered charge<sup>10</sup>;
- 30 (7) notices relating to a pending bankruptcy action relating to a registered charge<sup>11</sup>; and
- 31 (8) any other matters affecting the registered estate or any registered charge required to be entered in the register<sup>12</sup>.

- 1 'Charges register' is the register so named in the Land Registration Rules 2003, SI 2003/1417, r 4 (see PARA 813 ante) and its contents are described in r 9 (see the text and notes 2-11 infra): r 217(1).
- 2 For the meaning of 'registered estate' see PARA 861 note 3 post.
- 3 Land Registration Rules 2003, SI 2003/1417, r 9(a). As to first registration see PARA 826 et seq post.
- 4 Ibid r 9(b). As to priority of charges see PARA 944 et seq post.
- 5 Ibid r 9(c). For the meaning of 'registered charge' see PARA 861 note 8 post.
- 6 For the meaning of 'the Companies Acts' see PARA 815 note 4 ante.
- 7 Ie a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000 (see PARTNERSHIP vol 79 (2008) PARA 234 et seq).
- 8 Land Registration Rules 2003, SI 2003/1417, r 9(d).
- 9 Ibid r 9(e). As to the address for service see r 198; and PARA 1130 post.
- 10 Ibid r 9(f). The restrictions referred to in the text are those under the Land Registration Act 2002 s 40 (see PARA 1005 post) and s 86(4) (see PARA 1014 post).
- 11 Land Registration Rules 2003, SI 2003/1417, r 9(g). The notices referred to in the text are those under the Land Registration Act 2002 s 86(2) (see PARA 1014 post).
- 12 Land Registration Rules 2003, SI 2003/1417, r 9(h).

## UPDATE

### 816 Contents of the charges register

TEXT AND NOTES--SI 2003/1417 r 9 amended: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(2) THE REGISTER/ (iii) Index/817. Requirement to keep index.

## (iii) Index

### 817. Requirement to keep index.

The Chief Land Registrar<sup>1</sup> must keep an index for the purpose of enabling the following matters to be ascertained in relation to any parcel of land<sup>2</sup>:

- 32 (1) whether any registered estate<sup>3</sup> relates to the land<sup>4</sup>;
- 33 (2) how any registered estate which relates to the land is identified for the purposes of the register<sup>5</sup>;
- 34 (3) whether the land is affected by any, and, if so what, caution against first registration<sup>6</sup>; and
- 35 (4) such other matters as rules<sup>7</sup> may provide<sup>8</sup>.

Rules may make provision about how the index is to be kept and may, in particular, make provision about the information to be included in the index, the form in which information included in the index is to be kept and the arrangement of that information<sup>9</sup>. Rules may also make provision about official searches of the index<sup>10</sup>.

- 1 As to the Chief Land Registrar see PARA 1066 post.
- 2 As to the meaning of 'land' see PARA 826 note 4 post.
- 3 For the meaning of 'registered estate' see PARA 861 note 3 post.
- 4 Land Registration Act 2002 s 68(1)(a).
- 5 Ibid s 68(1)(b). As to the register of title see PARA 811 et seq ante.
- 6 Ibid s 68(1)(c). As to cautions against first registration see PARA 854 et seq post.
- 7 As to land registration rules generally see PARA 1125 post.
- 8 Land Registration Act 2002 s 68(1)(d).
- 9 Ibid s 68(2)(a)(i)-(iii). As to the form and content of the index see PARAS 818-820 post.
- 10 Ibid s 68(2)(b). As to official searches see PARA 1110 et seq post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(2) THE REGISTER/ (iii) Index/818. The index map and index of verbal descriptions.

### **818. The index map and index of verbal descriptions.**

The index<sup>1</sup> must comprise:

- 36 (1) an index map from which it is possible to ascertain, in relation to a parcel of land<sup>2</sup>, whether there is:
  - 1 (a) a pending application for first registration<sup>3</sup> (other than a title to a relating franchise<sup>4</sup>);
  - 2 (b) a pending application for a caution against first registration<sup>5</sup> (other than where the subject of the caution is a relating franchise);
  - 3 (c) a registered<sup>6</sup> estate in land;
  - 4 (d) a registered rentcharge;
  - 5 (e) a registered profit à prendre in gross;
  - 6 (f) a registered affecting franchise<sup>7</sup>; or
  - 7 (g) a caution against first registration (other than where the subject of the caution is a relating franchise),
- 2 and, if there is such a registered estate or caution, the title number<sup>8</sup>; and
- 37 (2) an index of verbal descriptions of:
  - 38 (a) pending applications for first registration of title to relating franchises;
  - 39 (b) pending applications for cautions against first registration where the subject of the caution is a relating franchise;
  - 40 (c) registered franchises which are relating franchises;
  - 41 (d) registered manors; and
  - 42 (e) cautions against first registration where the subject of the caution is a relating franchise,
- 4 and their title numbers, arranged by administrative area<sup>9</sup>.

This information required to be shown in the index is to be entered by the Chief Land Registrar<sup>10</sup> in the index as soon as practicable<sup>11</sup>.

1     le the index to be kept under the Land Registration Act 2002 s 68 (see PARA 817 ante): Land Registration Rules 2003, SI 2003/1417, r 10(1).

2     As to the meaning of 'land' see PARA 826 note 4 post.

3     As to applications for first registration see PARA 832 post.

4     'Relating franchise' means a franchise which is not an affecting franchise (see note 7 infra): Land Registration Rules 2003, SI 2003/1417, r 217(1).

5     As to cautions against first registration see PARA 854 et seq post.

6     For the meaning of 'registered' see PARA 826 note 2 post.

7     For the meaning of 'affecting franchise' see PARA 814 note 4 ante.

8     Land Registration Rules 2003, SI 2003/1417, r 10(1)(a). As to the meaning of 'title number' see PARA 813 ante.

9     Ibid r 10(1)(b).

10    As to the Chief Land Registrar see PARA 1066 post.

11    Land Registration Rules 2003, SI 2003/1417, r 10(2).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(2) THE REGISTER/ (iii) Index/819. Index of proprietors' names.

### **819. Index of proprietors' names.**

The Chief Land Registrar<sup>1</sup> must keep an index of proprietor's names, showing for each individual register<sup>2</sup> the name of the proprietor of the registered estate<sup>3</sup> and the proprietor of any registered charge<sup>4</sup> together with the title number<sup>5</sup>. Until every individual register is held in electronic form, the index need not contain the name of any corporate or joint proprietor of an estate or of a charge registered as proprietor prior to 1 May 1972<sup>6</sup>.

A person may apply in the prescribed form<sup>7</sup> for a search to be made in the index in respect of his own name or the name of some other person in whose property he can satisfy the registrar that he is interested generally (for instance as trustee in bankruptcy)<sup>8</sup>. On receipt of such an application the registrar must make the search and supply the applicant with details of every entry in the index relating to the particulars given in the application<sup>9</sup>.

1     As to the Chief Land Registrar see PARA 1066 post.

2     For the meaning of 'individual register' see PARA 812 note 3 ante.

3     For the meaning of 'registered estate' see PARA 861 note 3 post.

4     For the meaning of 'registered charge' see PARA 861 note 8 post.

5     Land Registration Rules 2003, SI 2003/1417, r 11(1). As to the meaning of 'title number' see PARA 813 ante.



6 Ibid r 11(2). Cf the Land Registration Rules 1925, SR & O 1925/1093, r 9(1) proviso (b) (as substituted; now revoked). Prior to 1 May 1972 the index of proprietors' names was used almost exclusively to implement the provisions of the Land Registration Act 1925 s 61(1), (3) (repealed) (creditors' notices in bankruptcy and bankruptcy inhibitions) and the names of proprietors not affected by bankruptcy were not recorded in the index.

7 See the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form PN1. As to the use of forms generally see PARA 1087 et seq post.

8 Ibid r 11(3).

9 Ibid r 11(4).

## UPDATE

### 819 Index of proprietors' names

TEXT AND NOTES 7, 8--SI 2003/1417 r 11(3), Sch 1 substituted: SI 2008/1919.

NOTE 8--The court may in appropriate circumstances make an order entitling a person to gain access to the index who would not otherwise be permitted to: *Parkinson v Hawthorne* [2008] EWHC 3499 (Ch), [2009] 1 WLR 1665 (authorisation given to judgment creditor who had no other way of enforcing judgment).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(2) THE REGISTER/ (iii) Index/820. The day list.

### 820. The day list.

The Chief Land Registrar<sup>1</sup> must keep a record (the 'day list')<sup>2</sup>, showing the date and time at which every pending application<sup>3</sup> under the Land Registration Act 2002 or the Land Registration Rules 2003 was made and of every application for an official search with priority<sup>4</sup>.

The entry of notice of an application for an official search with priority must remain on the day list until the priority period conferred by the entry has ceased to have effect<sup>5</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 See the Land Registration Rules 2003, SI 2003/1417, rr 12(1), 217(1).

3 For these purposes, the term 'pending application' does not include an application within the Land Registration Rules 2003, SI 2003/1417, Pt 13 (rr 131-160) (see PARA 1094 et seq post), other than an application that the registrar designate a document as an exempt commercial information document under r 136 (see PARA 1100 post): r 12(4).

4 Ibid r 12(1). The priority referred to in the text is priority under r 147: see PARA 1113 post. As to official searches see PARA 1110 et seq post.

Where the registrar proposes to alter the register without having received an application he must enter his proposal on the day list and, when so entered, the proposal will have the same effect for the purposes of rr 15, 20 (see PARAS 1078, 1080 post) as if it were an application to the registrar made at the date and time of its entry: r 12(3). As to alteration of the register see PARA 976 et seq post.

5 Ibid r 12(2).

## UPDATE

### 820 The day list

NOTE 3--SI 2003/1417 r 12(4) amended: SI 2008/1750.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(2) THE REGISTER/(iv) Priority Protection/821. Priority protection for applications for entries in the register.

#### **(iv) Priority Protection**

##### **821. Priority protection for applications for entries in the register.**

Where an application for an entry in the register<sup>1</sup> is protected, any entry made in the register during the priority period relating to the application is postponed to any entry made in pursuance of it<sup>2</sup>; and for these purposes, an application for an entry in the register is protected if it is one to which a priority period relates<sup>3</sup> and it is made before the end of that period<sup>4</sup>. This does not, however, apply if:

- 40 (1) the earlier entry was made in pursuance of a protected application<sup>5</sup> and the priority period relating to that application ranks ahead of the one relating to the application for the other entry<sup>6</sup>; or
- 41 (2) the earlier entry is one to which a direction<sup>7</sup> by the court that an entry of a restriction is to be made and is to have overriding priority applies<sup>8</sup>.

The Chief Land Registrar<sup>9</sup> may defer dealing with an application for an entry in the register if it appears to him that, were he to deal with the application, it would be postponed to an entry which is protected by a priority period<sup>10</sup>.

Rules<sup>11</sup> may make provision for priority periods in connection with official searches of the register, including searches of pending applications for first registration<sup>12</sup>, or the noting in the register of a contract for the making of a registrable disposition<sup>13</sup> of a registered estate or charge<sup>14</sup>. Rules may also make provision for the keeping of records in relation to priority periods and the inspection of such records<sup>15</sup>.

Official searches with priority are dealt with elsewhere in this title<sup>16</sup>.

1 As to the register of title see PARA 811 et seq ante.

2 Land Registration Act 2002 s 72(2).

3 Ibid s 72(1)(a).

4 Ibid s 72(1)(b).

5 Ibid s 72(3)(a).

6 Ibid s 72(3)(b).

7 Ie under ibid s 46(3) (see PARA 1015 post).

8 Ibid s 72(4).

9 As to the Chief Land Registrar see PARA 1066 post.

10 Land Registration Act 2002 s 72(5). The text refers to postponement under s 72(2); see the text and notes 1-2 supra.

11 As to land registration rules generally see PARA 1125 post.

12 Land Registration Act 2002 s 72(6)(a)(i). Rules under s 72(6)(a) may, in particular, make provision about: (1) the commencement and length of a priority period; (2) the applications for registration to which such a period relates; (3) the order in which competing priority periods rank; and (4) the application of s 72(2), (3) in cases where more than one priority period relates to the same application: s 72(7)(a)-(d). See further PARA 1113 et seq post. As to official searches see PARA 1110 et seq post; and as to first registration see PARA 826 et seq post.

13 For the meaning of 'registrable disposition' see PARA 911 post.

14 Land Registration Act 2002 s 72(6)(a)(ii). There was no equivalent provision under the Land Registration Act 1925. As to the circumstances in which it is envisaged that the Land Registration Act 2002 s 72(6)(a)(ii) will apply see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 9.69. For the meaning of 'registered estate' see PARA 861 note 3 post; and for the meaning of 'registered charge' see PARA 861 note 8 post.

15 Land Registration Act 2002 s 72(6)(b).

16 See PARA 1113 et seq post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(2) THE REGISTER/(iv) Priority Protection/822. Relative priority of registered charges.

## **822. Relative priority of registered charges.**

The relative priority of registered charges<sup>1</sup> is discussed elsewhere in this title<sup>2</sup>.

1 For the meaning of 'registered charge' see PARA 861 note 8 post.

2 See PARA 944 et seq post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(3) INTERESTS CAPABLE OF REGISTRATION/823. Unregistered legal estates.

## **(3) INTERESTS CAPABLE OF REGISTRATION**

### **823. Unregistered legal estates.**

The Land Registration Act 2002 makes provision about the registration<sup>1</sup> of title to unregistered legal estates<sup>2</sup> of any of the following kinds:

- 42 (1) an estate in land<sup>3</sup>;
- 43 (2) a rentcharge<sup>4</sup>;
- 44 (3) a franchise<sup>5</sup>;
- 45 (4) a profit a prendre in gross<sup>6</sup>; and
- 46 (5) any other interest or charge which subsists for the benefit of, or is a charge on, an interest the title to which is registered<sup>7</sup>.

1 As to registration generally see PARA 826 et seq post. See also PARA 824 post.

2 'Legal estate' has the same meaning as in the Law of Property Act 1925: Land Registration Act 2002 s 132(1). The Law of Property Act 1925 defines 'legal estate' as the estates, interests and charges, in or over land (subsisting or created at law) which are by that Act authorised to subsist or to be created as legal estates: see ss 1, 205(1)(x) (as amended); and REAL PROPERTY vol 39(2) (Reissue) PARA 37).

3 Land Registration Act 2002 s 2(a)(i). As to the meaning of 'land' see PARA 826 note 4 post.

4 Ibid s 2(a)(ii).

5 Ibid s 2(a)(iii).

6 Ibid s 2(a)(iv).

7 Ibid s 2(a)(v).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(3) INTERESTS CAPABLE OF REGISTRATION/824. Other legal interests.

### **824. Other legal interests.**

In addition to providing for registration<sup>1</sup> of title to legal estates<sup>2</sup>, the Land Registration Act 2002 also<sup>1</sup> makes provision about the registration<sup>2</sup> of title to interests capable of subsisting at law which are created by a disposition<sup>3</sup> of an interest the title to which is registered<sup>4</sup>.

1 As to registration generally see PARA 826 et seq post.

2 See PARA 823 ante.

3 As to dispositions of registered land see PARA 906 et seq.

4 Land Registration Act 2002 s 2(b).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(3) INTERESTS CAPABLE OF REGISTRATION/825. Power to deregister manors.

### **825. Power to deregister manors.**

On the application of the proprietor of a registered manor, the Chief Land Registrar<sup>1</sup> may remove the title to the manor from the register<sup>2</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 Land Registration Act 2002 s 119. The Land Registration Act 2002 contains no power to register a manor (ie the lordship of the manor); the registration of manors created practical difficulties for the Land Registry and offered few if any benefits: see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 3.21 (which had recommended that they should cease to be registrable).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/(i) Voluntary Registration/826.  
When title may be registered.

## (4) FIRST REGISTRATION

### (i) Voluntary Registration

#### 826. When title may be registered.

A person may apply to the Chief Land Registrar<sup>1</sup> to be registered<sup>2</sup> as the proprietor of an unregistered legal estate<sup>3</sup> of any of the following kinds:

- 47 (1) an estate in land<sup>4</sup>;
- 48 (2) a rentcharge;
- 49 (3) a franchise; and
- 50 (4) a profit à prendre in gross,

if either (a) the estate is vested in him; or (b) he is entitled to require the estate to be vested in him<sup>5</sup>. In respect of a leasehold estate, however, such an application may only be made if the estate was granted for a term of which more than seven years are unexpired<sup>6</sup>, except in the case of an estate in land where the right to possession under the lease is discontinuous<sup>7</sup>.

A person may not make an application<sup>8</sup> under head (a) above in respect of a leasehold estate vested in him as a mortgagee where there is a subsisting right of redemption<sup>9</sup>. Nor may a person make an application under head (b) above if his entitlement is as a person who has contracted to buy under a contract<sup>10</sup>.

No application for registration under these provisions may be made in respect of a leasehold estate in land under a lease created for a public-private partnership (a 'PPP lease') relating to transport in London<sup>11</sup>.

Special provision is made for the voluntary registration of demesne land<sup>12</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 'Registered' means entered in the register of title: Land Registration Act 2002 s 132(1). As to the register of title see PARA 811 et seq ante.

3 As to the meaning of 'legal estate' see PARA 823 note 2 ante.

4 'Land' includes: (1) buildings and other structures; (2) land covered with water; and (3) mines and minerals, whether or not held with the surface: Land Registration Act 2002 s 132(1). 'Mines and minerals' includes any strata or seam of minerals or substances in or under any land, and powers of working and getting any such minerals or substances: s 132(1). The Land Registration Act 2002 applies to land covered by internal waters of the United Kingdom which are within England and Wales, or adjacent to England or Wales and specified for these purposes by order made by the Lord Chancellor: s 130. At the date at which this volume states the law, no such order had been made. As to subordinate legislation generally see PARA 1124 post. 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3. For the meanings of 'England' and 'Wales' see PARA 803 note 2 ante. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5 Land Registration Act 2002 s 3(1), (2).

6 The Lord Chancellor may by order substitute for the term specified in the text such shorter term as he thinks fit: *ibid* s 118(1)(a). An order under s 118 may contain such transitional provision as the Lord Chancellor thinks fit: s 118(2). Before making such an order the Lord Chancellor must consult such persons as he considers appropriate: s 118(3). At the date at which this volume states the law, no such order had been made.

7 Ibid s 3(3), (4). If a person holds in the same right both a lease in possession, and a lease to take effect in possession on, or within a month of, the end of the lease in possession, then, to the extent that they relate to the same land, they are to be treated for the purposes of s 3 as creating one continuous term: s 3(7).

Discontinuous leases are rare in practice; for an example see *Cottage Holiday Associates Ltd v Customs and Excise Comrs* [1983] QB 735, [1983] STC 278.

8 As to the method of application see PARA 830 post.

9 Land Registration Act 2002 s 3(5).

10 Ibid s 3(6).

11 Ibid s 90(1). For these purposes, 'PPP lease' has the meaning given by the Greater London Authority Act 1999 s 218, which makes provision about leases created for public-private partnerships relating to transport in London (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 316 et seq): Land Registration Act 2002 s 90(6).

12 See ibid s 79; and PARA 883 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/(ii) Compulsory Registration/827.  
When title must be registered.

## (ii) Compulsory Registration

### 827. When title must be registered.

For the purposes of compulsory first registration of title<sup>1</sup>, a qualifying estate is an unregistered legal estate<sup>2</sup> which is either a freehold estate in land<sup>3</sup> or a leasehold estate in land for a term which, at the time of the transfer, grant or creation, has more than seven years to run<sup>4</sup>.

The requirement of registration applies on the occurrence of any of the following events<sup>5</sup>:

- 51 (1) the transfer (except by operation of law<sup>6</sup>) of a qualifying estate for valuable or other consideration<sup>7</sup>, by way of gift<sup>8</sup> or in pursuance of an order of any court, or by means of an assent (including a vesting assent)<sup>9</sup>, except the assignment of a mortgage term<sup>10</sup> or the assignment or surrender of a lease to the owner of the immediate reversion where the term is to merge in that reversion<sup>11</sup>;
- 52 (2) the transfer of an unregistered legal estate in land in circumstances<sup>12</sup> where there is a disposal by a landlord which leads to a person no longer being a secure tenant<sup>13</sup>;
- 53 (3) the grant out of a qualifying estate of an estate in land (except to a person as a mortgagee<sup>14</sup>):
- 5  
13. (a) for a term of years absolute<sup>15</sup> of more than seven years from the date of the grant; and
14. (b) for valuable or other consideration<sup>16</sup>, by way of gift<sup>17</sup> or in pursuance of an order of any court<sup>18</sup>;
- 6  
54 (4) the grant out of a qualifying estate of an estate in land for a term of years absolute to take effect in possession after the end of the period of three months beginning with the date of the grant<sup>19</sup>;
- 55 (5) the grant of a lease in pursuance of Part V of the Housing Act 1985 out of an unregistered legal estate in land<sup>20</sup>;
- 56 (6) the grant of a lease out of an unregistered legal estate in land in such circumstances as are mentioned head (2) above<sup>21</sup>;

57 (7) the creation of a protected first legal mortgage<sup>22</sup> of a qualifying estate<sup>23</sup>.

After consulting such persons as he considers appropriate<sup>24</sup>, the Lord Chancellor may by order amend the provisions described above so as to add to the events on the occurrence of which registration is required such relevant event<sup>25</sup> as he may specify in the order, and may make such consequential amendments of any provision of, or having effect under, any Act as he thinks appropriate<sup>26</sup>; but this power may not be exercised so as to require the title to an estate granted to a person as a mortgagee to be registered<sup>27</sup>.

Special provision is made with regard to the compulsory first registration of grants out of demesne land<sup>28</sup>.

The requirement of registration does not apply on the grant or transfer of a leasehold estate in land under a PPP lease relating to transport in London<sup>29</sup>.

1 Compulsory registration now extends to the whole of England and Wales: see the Registration of Title Order 1989, SI 1989/1347 (lapsed). As to voluntary first registration see PARA 826 ante; and as to application for first registration see PARA 830 et seq post. For the meanings of 'England' and 'Wales' see PARA 803 note 2 ante.

2 As to the meaning of 'legal estate' see PARA 823 note 2 ante.

3 For these purposes, 'land' does not include mines and minerals held apart from the surface: Land Registration Act 2002 s 4(9). As to the meaning of 'mines and minerals' see PARA 826 note 4 ante.

4 Ibid s 4(2). The Lord Chancellor may by order substitute for the term specified in the text such shorter term as he thinks fit: s 118(1)(b); and see PARA 826 note 6 ante. At the date at which this volume states the law, no such order had been made. As to unregistered interests which override first registration see PARA 866 post.

5 Cf the Land Registration Act 1925 s 123 (as substituted; prospectively repealed); which provides that the requirement of registration applies in relation to certain dispositions of unregistered land. The scope of the Land Registration Act 2002 s 4 may be widened by the addition of further events specified in an order made by the Lord Chancellor: see s 5; and the text and notes 26-27 infra.

6 Ibid s 4(3).

7 For the purposes of ibid s 4(1)(a), (c) (see heads (1), (3) in the text), if the estate transferred or granted has a negative value, it is to be regarded as transferred or granted for valuable or other consideration: s 4(6). 'Valuable consideration' does not include marriage consideration or a nominal consideration in money: s 132(1).

8 In ibid s 4(1)(a), (c) (see heads (1), (3) in the text), references to transfer or grant by way of gift include transfer or grant for the purpose of: (1) constituting a trust under which the settlor does not retain the whole of the beneficial interest; or (2) uniting the bare legal title and the beneficial interest in property held under a trust under which the settlor did not, on constitution, retain the whole of the beneficial interest: s 4(7).

9 Ibid s 4(1)(a)(i), (ii). For these purposes, 'vesting assent' means the instrument whereby a personal representative, after the death of a tenant for life or statutory owner, or the survivor of two or more tenants for life or statutory owners, vests settled land in a person entitled as tenant for life or statutory owner: see the Settled Land Act 1925 s 117(1)(xxxi); and SETTLEMENTS (definition applied by the Land Registration Act 2002 s 4(9)). Subject to certain exceptions, no settlement created on or after 1 January 1997 is a settlement for the purposes of the Settled Land Act 1925: see the Trusts of Land and Appointment of Trustees Act 1996 ss 2, 27; and REAL PROPERTY vol 39(2) (Reissue) PARA 65; SETTLEMENTS vol 42 (Reissue) PARA 676.

10 Land Registration Act 2002 s 4(4)(a).

11 Ibid s 4(4)(b).

12 In circumstances where the Housing Act 1985 s 171A (as added) applies (see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1900): Land Registration Act 2002 s 4(1)(b).

13 Ibid s 4(1)(b).

14 Ibid s 4(5).

15 'Term of years absolute' means a term of years (taking effect either in possession or in reversion whether or not at a rent) with or without impeachment for waste, subject or not to another legal estate, and either certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser on redemption, or in any other event (other than the dropping of a life, or the determination of a determinable life interest); but does not include any term of years determinable with life or lives or with the cesser of a determinable life interest, nor, if created after the commencement of the Law of Property 1925, a term of years which is not expressed to take effect in possession within 21 years after the creation thereof where required by that Act to take effect within that period; and for these purposes the expression 'term of years' includes a term for less than a year, or for a year or years and a fraction of a year or from year to year: see s 205(1)(xxvii); and REAL PROPERTY vol 39(2) (Reissue) PARA 101 (definition applied by the Land Registration Act 2002 s 132(1)).

16 See note 7 *supra*.

17 See note 8 *supra*.

18 Land Registration Act 2002 s 4(1)(c)(i), (ii). The Lord Chancellor may by order substitute for the term specified in s 4(1)(c)(i) (see head (3)(a) in the text) such shorter term as he thinks fit: s 118(1)(b); and see PARA 826 note 6 *ante*. At the date at which this volume states the law, no such order had been made.

19 *Ibid* s 4(1)(d).

20 *Ibid* s 4(1)(e). As to the Housing Act 1985 Pt V (ss 118-188) (as amended) (the right to buy) see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1795 *et seq*.

21 Land Registration Act 2002 s 4(1)(f).

22 For these purposes, a legal mortgage is protected if it takes effect on its creation as a mortgage to be protected by the deposit of documents relating to the mortgaged estate, and a first legal mortgage is one which, on its creation, ranks in priority ahead of any other mortgages then affecting the mortgaged estate: *ibid* s 4(8). 'Legal mortgage' means a mortgage by demise or subdemise or a charge by way of legal mortgage: Law of Property Act 1925 s 205(1)(xvi) (definition applied by the Land Registration Act 2002 s 132(1)).

23 *Ibid* s 4(1)(g).

24 This is a mandatory requirement: see *ibid* s 5(4).

25 For these purposes, a relevant event is an event relating to an unregistered legal estate which is an interest of any of the following kinds: (1) an estate in land; (2) a rentcharge; (3) a franchise; and (4) a profit à prendre in gross: *ibid* s 5(2).

26 *Ibid* s 5(1). A statutory instrument containing an order under s 5(1) is subject to annulment in pursuance of a resolution of either House of Parliament: s 5(4). At the date at which this volume states the law, no such order had been made. As to subordinate legislation generally see PARA 1124 *post*. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 *et seq*.

27 *Ibid* s 5(3).

28 See *ibid* s 80; and PARA 884 *post*.

29 *Ibid* s 90(2). As to the meaning of 'PPP lease' see PARA 826 note 11 *ante*.

## UPDATE

### 827 When title must be registered

TEXT AND NOTES 1-11--The requirement of registration applies on the occurrence of the transfer of a qualifying estate by a deed that appoints, or by virtue of the Charities Act 1993 s 83 (see CHARITIES vol 8 (2010) PARAS 280, 281) has effect as if it appointed, a new trustee or is made in consequence of the appointment of a new trustee, or by a vesting order under the Trustee Act 1925 s 44 (see TRUSTS vol 47 (2007 Reissue) PARAS 875, 876) that is consequential on the appointment of a new trustee: Land Registration Act 2002 s 4(1)(aa) (added by SI 2008/2872).



TEXT AND NOTES 6-9--Requirement of registration also applies on such a transfer giving effect to a partition of land subject to a trust of land: Land Registration Act 2002 s 4(1) (a)(iii) (added by SI 2008/2872).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/(ii) Compulsory Registration/828.  
Duty to apply for registration of title.

## **828. Duty to apply for registration of title.**

If the requirement of registration<sup>1</sup> applies, the responsible estate owner, or his successor in title, must, before the end of the period for registration, apply to the Chief Land Registrar<sup>2</sup> to be registered as the proprietor of the registrable estate<sup>3</sup>. The period for registration is two months beginning with the date on which the relevant event<sup>4</sup> occurs, or such longer period as the registrar may provide<sup>5</sup> by order if, on the application of any interested person, the registrar is satisfied that there is good reason for providing that the period for registration is to end on such later date as he may specify in the order<sup>6</sup>.

If the relevant event is the creation of a protected first legal mortgage of a qualifying estate<sup>7</sup>, the registrable estate is the estate charged by the mortgage and the responsible estate owner is the owner of that estate<sup>8</sup>. A mortgagee under such a mortgage may, however, make an application in the name of the mortgagor for the estate charged by the mortgage to be registered whether or not the mortgagor consents<sup>9</sup>.

If the requirement of registration applies otherwise than because of the creation of such a mortgage<sup>10</sup>, the registrable estate is the estate which is transferred or granted, and the responsible estate owner is the transferee or grantee of that estate<sup>11</sup>.

If, while a person is subject to a duty to make an application to be registered as proprietor of a legal estate, there is a dealing with that estate, then the Land Registration Act 2002 applies to that dealing as if the dealing had taken place after the date of first registration of that estate<sup>12</sup>.

1 'Requirement of registration' means the requirement of registration under the Land Registration Act 2002 s 4 (see PARA 827 ante): s 132(1).

2 As to the Chief Land Registrar see PARA 1066 post.

3 Land Registration Act 2002 s 6(1).

4 As to the relevant events for the purposes of *ibid* s 4 see PARA 827 ante.

5 *Ie* under *ibid* s 6(5): s 6(4).

6 *Ibid* s 6(4), (5).

7 *Ie* if the requirement of registration applies because of *ibid* s 4(1)(g): see PARA 827 ante at head (7) in the text.

8 *Ibid* s 6(2).

9 *Ibid* s 6(6); Land Registration Rules 2003, SI 2003/1417, r 21. As to the making of land registration rules generally see PARA 1125 post.

10 *Ie* if the requirement of registration applies otherwise than because of the Land Registration Act 2002 s 4(1)(g): see PARA 827 heads (1)-(6) ante.

11 *Ibid* s 6(3).

12 Land Registration Rules 2003, SI 2003/1417, r 38(1). The registration of any dealing falling within r 38(1) that is delivered for registration with the application made pursuant to the Land Registration Act 2002 s 6 has effect from the time of the making of that application: Land Registration Rules 2003, SI 2003/1417, r 38(2). As to the registration of a proprietor of a legal mortgage not within r 38 see r 34; and PARA 846 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/(ii) Compulsory Registration/829.  
Effect of non-compliance with duty to apply for registration of title.

### **829. Effect of non-compliance with duty to apply for registration of title.**

If the requirement of registration<sup>1</sup> is not complied with, the transfer, grant or creation becomes void as regards the transfer, grant or creation of a legal estate<sup>2</sup>. On the application of this provision, in a case where the relevant event<sup>3</sup> is:

- 58 (1) the transfer of a qualifying estate for valuable or other consideration, by way of gift or in pursuance of an order of any court, or by means of an assent, including a vesting assent<sup>4</sup>; or
- 59 (2) the transfer of an unregistered legal estate in land in circumstances where there is a disposal by a landlord which leads to a person no longer being a secure tenant<sup>5</sup>,

the title to the legal estate reverts to the transferor who holds it on a bare trust for the transferee<sup>6</sup>. In other cases<sup>7</sup>, the grant or creation has effect as a contract made for valuable consideration<sup>8</sup> to grant or create the legal estate concerned<sup>9</sup>. The possibility of reverter under this provision is, however, to be disregarded for the purposes of determining whether a fee simple is a fee simple absolute<sup>10</sup>.

If an order extending the period for registration<sup>11</sup> is made in a case where the provision described above has already applied, the avoiding of the estate is to be treated as not having occurred<sup>12</sup>.

If a legal estate is retransferred, regranted or recreated because of a failure to comply with the requirement of registration, the transferee, grantee or, as the case may be, the mortgagor is liable to the other party for all the proper costs of and incidental to the retransfer, regrant or recreation of the legal estate, and is liable to indemnify the other party in respect of any other liability reasonably incurred by him because of the failure to comply with the requirement of registration<sup>13</sup>.

1 For the meaning of 'requirement of registration' see PARA 828 note 1 ante.

2 Land Registration Act 2002 s 7(1). As to the meaning of 'legal estate' see PARA 823 note 2 ante.

3 Is the relevant event for the purposes of *ibid* s 4: see PARA 827 ante.

4 Is in a case falling within *ibid* s 4(1)(a): see PARA 827 head (1) ante.

5 Is in a case falling within *ibid* s 4(1)(b): see PARA 827 head (2) ante.

6 *Ibid* s 7(2)(a).

7 Is in a case falling within *ibid* s 4(1)(c)-(g): see PARA 827 heads (3)-(7) ante.

8 As to the meaning of 'valuable consideration' see PARA 827 note 7 ante.

9 Land Registration Act 2002 s 7(2)(b). In the case of a grant out of demesne land, the grant has effect as a contract made for valuable consideration to grant the legal estate concerned: see s 80(5); and PARA 884 post.

10 Ibid s 7(4).

11 In an order under ibid s 6(5): see PARA 828 ante.

12 Ibid s 7(3).

13 Ibid s 8.

## UPDATE

### 829 Effect of non-compliance with duty to apply for registration of title

TEXT AND NOTES 1-9--On the application of the Land Registration Act 2002 s 7(1) in a case falling within s 4(1)(aa) (see PARA 827), the title to the legal estate reverts to the person in whom it was vested immediately before the transfer: s 7(2)(aa) (added by SI 2008/2872).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/(iii) Procedure on Application for First Registration/830. Introduction.

### (iii) Procedure on Application for First Registration

#### 830. Introduction.

There are rules covering the procedure for making an application for first registration and examination of title by the Chief Land Registrar<sup>1</sup>. The provisions with regard to applications for registration generally<sup>2</sup>, objections to applications<sup>3</sup>, the correction of mistakes in applications and accompanying documents<sup>4</sup> are discussed elsewhere in this title<sup>5</sup>.

1 See PARAS 831-833 post. As to the Chief Land Registrar see PARA 1066 post.

2 See PARAS 1076-1080 post.

3 See PARA 1081 post.

4 See PARA 1082 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/(iii) Procedure on Application for First Registration/831. Power to make rules about first registration.

#### 831. Power to make rules about first registration.

Rules<sup>1</sup> may make provision about:

- 60 (1) the making of applications for first registration<sup>2</sup>;

- 61 (2) the functions of the Chief Land Registrar<sup>3</sup> following the making of such an application, including provision about the examination of title<sup>4</sup> and the entries to be made in the register<sup>5</sup> where such an application is approved<sup>6</sup>;
- 62 (3) the effect of any entry made in the register in pursuance of such an application<sup>7</sup>.

1 As to land registration rules generally see PARA 1125 post.

2 le the making of applications for registration under the Land Registration Act 2002 Pt II Ch I (ss 3-14) (see PARAS 826-829 ante, 834-842 post): s 14(a). As to the rules relating to applications for first registration see PARA 832 post.

3 As to the Chief Land Registrar see PARA 1066 post.

4 As to the examination of title see PARA 833 post.

5 As to the register of title see PARA 811 et seq ante.

6 Land Registration Act 2002 s 14(b).

7 Ibid s 14(c). As to the effect of registration see PARA 859 et seq post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/(iii) Procedure on Application for First Registration/832. Making an application for first registration.

### **832. Making an application for first registration.**

An application for first registration must be made in the prescribed form<sup>1</sup>. Unless the Chief Land Registrar otherwise directs, every such application must be accompanied by:

- 63 (1) sufficient details, by plan or otherwise<sup>2</sup>, so that the land can be identified clearly on the Ordnance Survey map<sup>3</sup>;
- 64 (2) in the case of a leasehold estate, the lease, if in the possession or control of the applicant, and a certified copy<sup>4</sup>;
- 65 (3) all deeds and documents relating to the title that are in the possession or control of the applicant<sup>5</sup>;
- 66 (4) a list in duplicate in the prescribed form of all the documents delivered<sup>6</sup>.

When applying for first registration of an estate in mines and minerals held apart from the surface, the applicant must provide:

- 67 (a) a plan of the surface under which the mines and minerals lie;
- 68 (b) any other sufficient details by plan or otherwise so that the mines and minerals can be identified clearly; and
- 69 (c) full details of rights incidental to the working of the mines and minerals<sup>7</sup>.

Unless all of the land above and below the surface is included in an application for first registration, the applicant must provide a plan of the surface on or under or over which the land to be registered lies, and sufficient information to define the vertical and horizontal extents of the land<sup>8</sup>, but this does not apply where only mines and minerals are excluded from the application<sup>9</sup>.

An application for first registration by a person who is unable to produce a full documentary title must be supported by evidence: (i) to satisfy the registrar that the applicant is entitled<sup>10</sup> or required<sup>11</sup> to apply under the Land Registration Act 2002; and (ii) where appropriate, to account for the absence of documentary evidence of title<sup>12</sup>.

A person applying for first registration must provide information to the registrar about any unregistered interests that override first registration<sup>13</sup> that are within the actual knowledge of the applicant or his conveyancer and affect the estate to which the application relates<sup>14</sup> but is not required to provide information about an interest that cannot<sup>15</sup> be protected by notice, an interest that is apparent from the deeds and documents of title accompanying the application<sup>16</sup>, a public right<sup>17</sup>, a local land charge<sup>18</sup> or about certain leasehold estates in land<sup>19</sup>. Where the applicant provides information about a disclosable overriding interest<sup>20</sup>, the registrar may enter a notice in the register in respect of that interest<sup>21</sup>.

1 Land Registration Rules 2003, SI 2003/1417, r 23(1). The prescribed form is Sch 1 Form FR1: see r 23(1). Where Her Majesty applies for the first registration of an estate under the Land Registration Act 2002 s 79 (see PARA 883 post), the form must be used with such modifications to it as are appropriate and have been approved by the Chief Land Registrar: Land Registration Rules 2003, SI 2003/1417, r 23(2). As to the use of forms generally see PARA 1087 et seq post. As to the Chief Land Registrar see PARA 1066 post.

2 Ie subject to the Land Registration Rules 2003, SI 2003/1417, rr 25, 26 (see the text and notes 7-9 infra): r 24(1)(a).

3 Ibid r 24(1)(a). On an application to register a rentcharge, franchise or profit à prendre in gross, the land to be identified is the land affected by that estate: r 24(2). As to the Ordnance Survey see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1110 et seq.

4 Ibid r 24(1)(b). 'Certified copy' means a copy of a document which a conveyancer has: (1) certified on its face to be a true copy of the original; and (2) indorsed with his name and address: ibid r 217(1). 'Conveyancer' means a solicitor, a licensed conveyancer within the meaning of the Administration of Justice Act 1985 s 11(2) (see LEGAL PROFESSIONS vol 66 (2009) PARA 1319), or a fellow of the Institute of Legal Executives; and a reference to a person's conveyancer is a reference to a solicitor, licensed conveyancer or fellow of the Institute of Legal Executives who is acting on that person's behalf: Land Registration Rules 2003, SI 2003/1417, r 217(1).

5 Ibid r 24(1)(c).

6 Ibid r 24(1)(d). As to the prescribed form see r 24(1)(d), Sch 1 Form D1. Rule 214, which allows a certified or office copy of a document to be lodged instead of an original, does not apply to any document required to be lodged with an application for first registration: see r 214(2)(a); and PARA 1083 post.

7 Ibid r 25. As to mines and minerals see MINES, MINERALS AND QUARRIES.

8 Ibid r 26(1).

9 Ibid r 26(2).

10 Ie under the Land Registration Act 2002 s 3(2): see PARA 826 ante.

11 Ie under ibid s 6(1): see PARA 828 ante.

12 Land Registration Rules 2003, SI 2003/1417, r 27.

13 Ie any of the interests that fall within the Land Registration Act 2002 ss 11, 12, Sch 1: see PARA 866 post.

14 Land Registration Rules 2003, SI 2003/1417, r 28(1).

15 Ie under the Land Registration Act 2002 s 33 or s 90(4) (see PARAS 995-996 post): Land Registration Rules 2003, SI 2003/1417, r 28(2)(a).

16 Ibid r 28(2)(b). The documents referred to in the text are those accompanying the application under r 24: see the text and notes 1-6 supra.

17 Ibid re 28(2)(c).

18 Ibid r 28(2)(d). As to local land charges see the Land Registration Act 2002 Sch 1 para 6; para 866 post; and LAND CHARGES.

19 Land Registration Rules 2003, SI 2003/1417, r 28(2)(e). The reference in the text is a reference to a leasehold estate in land if it is within the Land Registration Act 2002 Sch 1 para 1 (see PARA 866 post), and, at the time of the application, the term granted by the lease has one year or less to run: Land Registration Rules 2003, SI 2003/1417, r 28(2)(e).

20 A 'disclosable overriding interest' is an interest that the applicant must provide information about under ibid r 28(1) (see the text and notes 13-14 supra): r 28(3).

21 Ibid r 28(4).

## UPDATE

### 832 Making an application for first registration

NOTE 1--SI 2003/1417 Sch 1 Form FR1 substituted by SI 2008/1919; and amended by SI 2009/1996.

NOTE 4--'Conveyancer' means (1) a solicitor; (2) a licensed conveyancer within the meaning of the Administration of Justice Act 1985 s 11(2) (see LEGAL PROFESSIONS vol 66 (2009) PARA 1319); (3) a fellow of the Institute of Legal Executives; (4) a barrister; (5) a duly certificated notary public; or a registered European lawyer within the meaning of the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, who by virtue of regs 6, 12 is entitled to prepare for remuneration an instrument creating or transferring an interest in land in England and Wales: SI 2003/1417 r 217(1) (amended by SI 2008/1919).

TEXT AND NOTES 10-12--SI 2003/1417 r 27 amended: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/(iii) Procedure on Application for First Registration/833. Examination of title.

### 833. Examination of title.

In examining the title shown by the documents accompanying an application for first registration<sup>1</sup> the Chief Land Registrar<sup>2</sup> must have regard to any examination by a conveyancer<sup>3</sup> prior to the application and to the nature of the property<sup>4</sup>. He may make searches and inquiries and give notices to other persons, direct that searches and inquiries be made by the applicant, and advertise the application<sup>5</sup>.

1 As to application for first registration see PARA 832 ante.

2 As to the Chief Land Registrar see PARA 1066 post.

3 For the meaning of 'conveyancer' see PARA 832 note 4 ante.

4 Land Registration Rules 2003, SI 2003/1417, r 29.

5 Ibid r 30.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/(iv) Classes of Title which may be Registered/A. IN GENERAL/834. Titles to freehold and leasehold estates.

#### **(iv) Classes of Title which may be Registered**

##### **A. IN GENERAL**

##### **834. Titles to freehold and leasehold estates.**

In the case of an application for first registration<sup>1</sup> of a freehold estate, the classes of title with which the applicant may be registered as proprietor are: (1) absolute title; (2) qualified title; and (3) possessory title<sup>2</sup>. In the case of an application for first registration of a leasehold estate, the classes of title with which the applicant may be registered as proprietor are: (a) absolute title; (b) good leasehold title; (c) qualified title; and (d) possessory title<sup>3</sup>.

After first registration of a title as anything less than an absolute title, the Chief Land Registrar<sup>4</sup> has power to upgrade it if the statutory conditions for doing so are satisfied<sup>5</sup>. He also has power to use the register<sup>6</sup> to record a defect in a registered title if it appears to him that a right to determine a registered estate in land is exercisable<sup>7</sup>.

1 As to application for first registration see PARA 832 ante; and as to the persons who are entitled or required to apply see PARAS 826, 828 ante.

2 Land Registration Act 2002 s 9(1).

3 Ibid s 10(1). As to the circumstances in which each class of title is available see PARA 838 et seq post.

4 As to the Chief Land Registrar see PARA 1066 post.

5 See the Land Registration Act 2002 ss 62, 63; and PARA 875 et seq post.

6 As to the register of title see PARA 811 et seq ante.

7 See the Land Registration Act 2002 s 64; and PARA 881 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/(iv) Classes of Title which may be Registered/B. FREEHOLD LAND/835. First registration with absolute freehold title.

##### **B. FREEHOLD LAND**

##### **835. First registration with absolute freehold title.**

In the case of an application for first registration<sup>1</sup> of a freehold estate, a person may be registered<sup>2</sup> with absolute title if the Chief Land Registrar<sup>3</sup> is of the opinion that the person's title to the estate is such as a willing buyer could properly be advised by a competent professional adviser to accept<sup>4</sup>. In applying this provision, the registrar may disregard the fact that a person's title appears to him to be open to objection if he is of the opinion that the defect will not cause the holding under the title to be disturbed<sup>5</sup>.

Registration as the proprietor of a freehold estate with absolute title has the effect<sup>6</sup> that the estate is vested in the proprietor together with all interests subsisting for the benefit of the

estate<sup>7</sup> and subject only to the following interests affecting the estate<sup>8</sup> at the time of registration:

- 70 (1) interests which are the subject of an entry in the register<sup>9</sup> in relation to the estate<sup>10</sup>;
- 71 (2) unregistered interests which override first registration<sup>11</sup>; and
- 72 (3) interests acquired under the Limitation Act 1980<sup>12</sup> of which the proprietor has notice<sup>13</sup>.

If the proprietor is not entitled to the estate for his own benefit, or not entitled solely for his own benefit, then, as between himself and the persons beneficially entitled to the estate, the estate is vested in him subject to such of their interests as he has notice of<sup>14</sup>.

1 As to applications for first registration see PARA 832 ante; and as to the persons who are entitled or required to apply see PARAS 826, 828 ante.

2 For the meaning of 'registered' see PARA 826 note 2 ante.

3 As to the Chief Land Registrar see PARA 1066 post.

4 Land Registration Act 2002 s 9(2).

5 Ibid s 9(3).

6 Ibid s 11(1), (2).

7 Ibid s 11(3).

8 For the purposes of the Land Registration Act 2002, references to an interest affecting an estate or charge are references to an adverse right affecting the title to the estate or charge: s 132(3). Subject to certain exceptions, such references include pending land actions and other matters mentioned in s 87(1): see s 87; and PARA 1019 post. They do not, however, include a petition in bankruptcy or bankruptcy order: see s 86(1); and PARA 1014 post.

9 As to the register of title see PARA 811 et seq ante.

10 Land Registration Act 2002 s 11(4)(a).

11 I.e unregistered interests which fall within any of the paragraphs of ibid Sch 1 (see PARA 866 post): s 11(4)(b).

12 See LIMITATION PERIODS.

13 Land Registration Act 2002 s 11(4)(c). For these purposes, 'notice' has its usual meaning, and therefore includes constructive notice: see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 3.47.

14 Land Registration Act 2002 s 11(5). 'Notice' includes constructive notice: see note 13 supra.

## UPDATE

### 835 First registration with absolute freehold title

TEXT AND NOTES 8-13--In its application to franchises, the Land Registration Act 2002 s 11(4) has effect without prejudice to any right of the Crown to forfeit the franchise: Land Registration Rules 2003, SI 2003/1417, r 196B(1) (added by SI 2008/1919).



Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/(iv) Classes of Title which may be  
Registered/B. FREEHOLD LAND/836. First registration with qualified freehold title.

### **836. First registration with qualified freehold title.**

In the case of an application for first registration<sup>1</sup> of a freehold estate, a person may be registered with qualified title if the Chief Land Registrar<sup>2</sup> is of the opinion that the person's title to the estate has been established only for a limited period or subject to certain reservations which cannot be disregarded<sup>3</sup> on the grounds that the registrar is of the opinion that they will not cause the holding under the title to be disturbed<sup>4</sup>. Registration with qualified title has the same effect as registration with absolute title<sup>5</sup>, except that it does not affect the enforcement of any estate, right or interest which appears from the register<sup>6</sup> to be excepted from the effect of registration<sup>7</sup>.

1 As to application for first registration see PARA 832 ante; and as to the persons who are entitled or required to apply see PARAS 826, 828 ante.

2 As to the Chief Land Registrar see PARA 1066 post.

3 le under the Land Registration Act 2002 s 9(3): see PARA 835 ante.

4 Ibid s 9(4).

5 As to the effect of registration with an absolute freehold title see PARA 835 ante.

6 As to the register of title see PARA 811 et seq post.

7 Land Registration Act 2002 s 11(6).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/(iv) Classes of Title which may be  
Registered/B. FREEHOLD LAND/837. First registration with possessory freehold title.

### **837. First registration with possessory freehold title.**

In the case of an application for first registration<sup>1</sup> of a freehold estate, a person may be registered with possessory title if the Chief Land Registrar<sup>2</sup> is of the opinion that the person is in actual possession of the land<sup>3</sup>, or in receipt of the rents and profits of the land, by virtue of the estate, and that there is no other class of title<sup>4</sup> with which he may be registered<sup>5</sup>. Registration with possessory title has the same effect as registration with absolute title<sup>6</sup>, except that it does not affect the enforcement of any estate, right or interest adverse to, or in derogation of, the proprietor's title subsisting at the time of registration or then capable of arising<sup>7</sup>.

1 As to application for first registration see PARA 832 ante; and as to the persons who are entitled or required to apply see PARAS 826, 828 ante.

2 As to the Chief Land Registrar see PARA 1066 post.

3 As to the meaning of 'land' see PARA 826 note 4 ante.

4 As to the other classes of title see PARA 834 ante.

5 Land Registration Act 2002 s 9(5).

6 As to the effect of registration with an absolute freehold title see PARA 835 ante.

7 Land Registration Act 2002 s 11(7). The general effect of registration with a possessory title is that the title is not guaranteed prior to the date of the first registration. Such prior title has to be examined by a purchaser as if the land were not registered; any adverse rights are excepted from the effect of registration; their priority is therefore protected on the registration of a registrable disposition: see ss 29(2)(a)(iii), 30(2)(a)(iii); and PARAS 935-936 post. A contract for sale of registered freehold land is misleading if it does not disclose that the land is registered with possessory title only, and the purchaser may refuse to accept the title: *Re Brine and Davies'* *Contract* [1935] Ch 388.

## UPDATE

### 837 First registration with possessory freehold title

TEXT AND NOTES 1-5--In its application to rentcharges, the Land Registration Act 2002 s 9(5) has effect as if for the words 'in actual possession of the land, or in receipt of the rents and profits of the land' there were substituted the words 'in receipt of the rent': Land Registration Rules 2003, SI 2003/1417, r 196A (added by SI 2008/1919).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/(iv) Classes of Title which may be Registered/C. LEASEHOLD LAND/838. First registration with absolute leasehold title.

## C. LEASEHOLD LAND

### 838. First registration with absolute leasehold title.

In the case of an application for first registration<sup>1</sup> of a leasehold estate, a person may be registered<sup>2</sup> with absolute title if the Chief Land Registrar<sup>3</sup> is of the opinion that the person's title to the estate is such as a willing buyer could properly be advised by a competent professional adviser to accept, and the registrar approves the lessor's title to grant the lease<sup>4</sup>. In applying this provision, the registrar may disregard the fact that a person's title appears to him to be open to objection if he is of the opinion that the defect will not cause the holding under the title to be disturbed<sup>5</sup>.

Before completing an application for registration of a leasehold estate with absolute title where:

- 73 (1) at the time of the grant of the lease the reversion<sup>6</sup> was not registered, or the reversion was registered but the grant of the lease was not required to be completed by registration<sup>7</sup>;
- 74 (2) the lease is not noted in the register of the registered reversion<sup>8</sup>; and
- 75 (3) it is not apparent from the application that the proprietor of the registered reversion consents to the registration<sup>9</sup>,

the registrar must give notice<sup>10</sup> of the application to that proprietor<sup>11</sup>.

Registration of a person as the proprietor of a leasehold estate with absolute title has the effect<sup>12</sup> that the estate is vested in the proprietor together with all interests subsisting for the benefit of the estate<sup>13</sup> and subject only to the following interests affecting the estate<sup>14</sup> at the time of registration:

- 76 (a) implied and express covenants, obligations and liabilities incident to the estate<sup>15</sup>;

- 77 (b) interests which are the subject of an entry in the register<sup>16</sup> in relation to the estate<sup>17</sup>;
- 78 (c) unregistered interests which override first registration<sup>18</sup>; and
- 79 (d) interests acquired under the Limitation Act 1980<sup>19</sup> of which the proprietor has notice<sup>20</sup>.

If the proprietor is not entitled to the estate for his own benefit, or not entitled solely for his own benefit, then, as between himself and the persons beneficially entitled to the estate, the estate is vested in him subject to such of their interests as he has notice of<sup>21</sup>.

On completing registration of the leasehold estate, the registrar must enter notice of the lease in the register of the registered reversion<sup>22</sup>.

The Land Registration Act 2002 has introduced a conveyancing reform which it is anticipated will ensure that the majority of leases are registered with absolute title<sup>23</sup>. The Law of Property Act 1925 provides that under a contract to grant or assign a term of years out of unregistered land<sup>24</sup>, whether derived or to be derived out of freehold or leasehold land, the intended lessee or assign is not generally entitled to call for the title to the freehold<sup>25</sup>; and that on a contract to grant a lease for a term of years to be derived out of an unregistered leasehold interest, with a leasehold reversion, the intended lessee does not normally have the right to call for the title to that reversion<sup>26</sup>. These provisions do not, however, now apply to a contract to grant a term of years if the grant will be an event<sup>27</sup> which triggers compulsory first registration of title under the Land Registration Act 2002<sup>28</sup>.

1 As to application for first registration see PARA 832 ante; and as to the persons who are entitled or required to apply see PARAS 826, 828 ante.

2 For the meaning of 'registered' see PARA 826 note 2 ante.

3 As to the Chief Land Registrar see PARA 1066 post.

4 Land Registration Act 2002 s 10(2).

5 Ibid s 10(4).

6 For these purposes, 'reversion' refers to the estate that is the immediate reversion to the lease that is the subject of the application referred to in the Land Registration Rules 2003, SI 2003/1417, r 37(1); and 'registered reversion' refers to such estate when it is a registered estate: r 37(4). For the meaning of 'registered estate' see PARA 861 note 3 post.

7 Ibid r 37(2)(a).

8 Ibid r 37(2)(b). See note 6 supra.

9 Ibid r 37(2)(c).

10 As to service of notice see PARA 1130 post.

11 Land Registration Rules 2003, SI 2003/1417, r 37(1).

12 Land Registration Act 2002 s 12(1), (2).

13 Ibid s 12(3).

14 For the meaning of references to an interest affecting an estate see PARA 835 note 8 ante.

15 Land Registration Act 2002 s 12(4)(a). Information as to such covenants, obligations and liabilities (including, for example, the liability to forfeiture for breach of covenant) is obtained from the lease itself, which thus remains an essential document of title notwithstanding registration.

16 In the case of absolute leasehold title, entries on the register will include notice of any restrictive covenants affecting a superior estate: cf *White v Bijou Mansions Ltd* [1937] Ch 610, [1937] 3 All ER 269; affd

[1938] Ch 351, [1938] 1 All ER 546, CA. Such covenants are not overriding interests so far as they may affect an absolute leasehold title. As to overriding interests see PARA 866 et seq. As to the register of title see PARA 811 et seq ante.

17 Land Registration Act 2002 s 12(4)(b).

18 Ie unregistered interests which fall within any of the paragraphs of ibid Sch 1 (see PARA 866 post): s 12(4)(c).

19 See LIMITATION PERIODS.

20 Land Registration Act 2002 s 12(4)(d). As to the meaning of 'notice' for the purposes of s 12(4)(d), (5) see PARA 835 note 13 ante.

21 Ibid s 12(5). See note 20 supra.

22 Land Registration Rules 2003, SI 2003/1417, r 37(3).

23 See the text and notes 24-28 infra; and see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARAS 12.12-12.13.

24 The Law of Property Act 1925 s 44 (as amended) does not apply in relation to registered land or to a term of years to be derived out of registered land: see PARA 966 post.

25 See ibid s 44(2); and SALE OF LAND vol 42 (Reissue) PARA 140.

26 See ibid s 44(4); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 89; SALE OF LAND vol 42 (Reissue) PARA 140.

27 Ie an event falling within the Land Registration Act 2002 s 4(1): see PARA 827 ante.

28 Law of Property Act 1925 s 44(4A) (added by the Land Registration Act 2002 s 133, Sch 11 para 2(1), (2)).

## UPDATE

### 838 First registration with absolute leasehold title

TEXT AND NOTES 6-11--SI 2003/1417 r 37(1), (2) substituted: SI 2008/1919.

TEXT AND NOTES 14-20--In its application to franchises, the Land Registration Act 2002 s 12(4) has effect without prejudice to any right of the Crown to forfeit the franchise: SI 2003/1417 r 196B(1) (added by SI 2008/1919).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/(iv) Classes of Title which may be Registered/C. LEASEHOLD LAND/839. First registration with good leasehold title.

### 839. First registration with good leasehold title.

In the case of an application for first registration<sup>1</sup> of a leasehold estate, a person may be registered<sup>2</sup> with good leasehold title if the Chief Land Registrar<sup>3</sup> is of the opinion that the person's title to the estate is such as a willing buyer could properly be advised by a competent professional adviser to accept<sup>4</sup>; but registration with good leasehold title indicates that the registrar has not approved the lessor's title to grant the lease. In applying this provision, the registrar may disregard the fact that a person's title appears to him to be open to objection if he is of the opinion that the defect will not cause the holding under the title to be disturbed<sup>5</sup>.

Registration with good leasehold title has the same effect as registration with absolute title<sup>6</sup>, except that it does not affect the enforcement of any estate, right or interest affecting, or in

derogation of, the title of the lessor to grant the lease<sup>7</sup>. Such a title reflects the fact that a lessee or assignee is not entitled to examine the lessor's title unless the contract so provides<sup>8</sup>.

1 As to application for first registration see PARA 832 ante; and as to the persons who are entitled or required to apply see PARAS 826, 828 ante.

2 For the meaning of 'registered' see PARA 826 note 2 ante.

3 As to the Chief Land Registrar see PARA 1066 post.

4 Land Registration Act 2002 s 10(3).

5 Ibid s 10(4).

6 As to the effect of first registration with an absolute leasehold title see PARA 838 ante.

7 Land Registration Act 2002 s 12(6).

8 See the Law of Property Act 1925 s 44(2)-(4); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 89; SALE OF LAND. However, the provisions of s 44(2), (4) are disapplied if the grant will be an event within the Land Registration Act 2002 s 4(1) (events which trigger compulsory first registration of title: see PARA 827 ante); see the Law of Property Act 1925 s 44(4A) (as added); and PARA 838 ante.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/(iv) Classes of Title which may be Registered/C. LEASEHOLD LAND/840. First registration with qualified leasehold title.

#### **840. First registration with qualified leasehold title.**

In the case of an application for first registration<sup>1</sup> of a leasehold estate, a person may be registered<sup>2</sup> with qualified title if the Chief Land Registrar<sup>3</sup> is of the opinion that the person's title to the estate, or the lessor's title to the reversion, has been established only for a limited period or subject to certain reservations which cannot be disregarded<sup>4</sup> on the grounds that the registrar is of the opinion that they will not cause the holding under the title to be disturbed<sup>5</sup>.

Registration with qualified title has the same effect as registration with absolute title<sup>6</sup> except that it does not affect the enforcement of any estate, right or interest which appears from the register to be excepted from the effect of registration<sup>7</sup>.

1 As to application for first registration see PARA 832 ante; and as to the persons who are entitled or required to apply see PARAS 826, 828 ante.

2 For the meaning of 'registered' see PARA 826 note 2 ante.

3 As to the Chief Land Registrar see PARA 1066 post.

4 I.e. under the Land Registration Act 2002 s 10(4): see PARAS 838-839 ante.

5 Ibid s 10(5).

6 As to the effect of first registration with an absolute leasehold title see PARA 838 ante.

7 Land Registration Act 2002 s 12(7).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/(iv) Classes of Title which may be Registered/C. LEASEHOLD LAND/841. First registration with possessory leasehold title.

### **841. First registration with possessory leasehold title.**

In the case of an application for first registration<sup>1</sup> of a leasehold estate, a person may be registered<sup>2</sup> with possessory title if the Chief Land Registrar<sup>3</sup> is of the opinion that the person is in actual possession of the land<sup>4</sup>, or in receipt of the rents and profits of the land, by virtue of the estate, and that there is no other class of title<sup>5</sup> with which he may be registered<sup>6</sup>.

Registration with possessory title has the same effect as registration with absolute title<sup>7</sup>, except that it does not affect the enforcement of any estate, right or interest adverse to, or in derogation of, the proprietor's title subsisting at the time of registration or then capable of arising<sup>8</sup>.

1 As to application for first registration see PARA 832 ante; and as to the persons who are entitled or required to apply see PARAS 826, 828 ante.

2 For the meaning of 'registered' see PARA 826 note 2 ante.

3 As to the Chief Land Registrar see PARA 1066 post.

4 As to the meaning of 'land' see PARA 826 note 4 ante.

5 As to the classes of title see PARA 834 ante.

6 Land Registration Act 2002 s 10(6).

7 As to the effect of first registration with an absolute leasehold title see PARA 838 ante.

8 Land Registration Act 2002 s 12(8). The general effect of registration with a possessory title is that the title is not guaranteed prior to the date of the first registration. Such prior title has to be examined by a purchaser as if the land were not registered; any adverse rights are excepted from the effect of registration; its priority is therefore protected on the registration of a registrable disposition: see ss 29(2)(a)(iii), 30(2)(a)(iii); and PARAS 935-936 post.

## **UPDATE**

### **841 First registration with possessory leasehold title**

TEXT AND NOTES 1-6--In its application to rentcharges, the Land Registration Act 2002 s 10(6) has effect as if for the words 'in actual possession of the land, or in receipt of the rents and profits of the land' there were substituted the words 'in receipt of the rent': Land Registration Rules 2003, SI 2003/1417, r 196A (added by SI 2008/1919).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/ (v) Appurtenant Rights and Charges and Miscellaneous Entries/842. In general.

## **(v) Appurtenant Rights and Charges and Miscellaneous Entries**

### **842. In general.**

Rules<sup>1</sup> may make provision: (1) for the registration<sup>2</sup> of the proprietor of a registered estate as the proprietor of an unregistered legal estate<sup>3</sup> which subsists for the benefit of the registered estate<sup>4</sup>; and (2) for the registration of a person as the proprietor of an unregistered legal estate which is a charge on a registered estate<sup>5</sup>.

1 As to the rules made see PARA 843 et seq post. As to land registration rules generally see PARA 1125 post.

2 As to registration see PARA 826 et seq ante.

3 For the meaning of 'legal estate' see PARA 823 note 2 ante.

4 Land Registration Act 2002 s 13(a).

5 Ibid s 13(b).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/ (v) Appurtenant Rights and Charges and Miscellaneous Entries/843. Entry of appurtenant rights on first registration.

### **843. Entry of appurtenant rights on first registration.**

The benefit of an appurtenant right may be entered in the register<sup>1</sup> at the time of first registration if, on examination of the title<sup>2</sup> or on receipt of a written application<sup>3</sup> providing details of the right and evidence of its existence, the Chief Land Registrar<sup>4</sup> is satisfied that the right subsists as a legal interest and benefits the registered estate<sup>5</sup>.

If the registrar is not satisfied that the right subsists as a legal interest benefiting the registered estate, he may enter details of the right claimed in the property register with such qualification as he considers appropriate<sup>6</sup>.

1 As to the register of title see PARA 811 et seq ante.

2 As to examination of title see PARA 833 ante.

3 As to the method of application see PARA 830 et seq ante.

4 As to the Chief Land Registrar see PARA 1066 post.

5 Land Registration Rules 2003, SI 2003/1417, r 33(1).

6 Ibid r 33(2).

### **UPDATE**

### **843 Entry of appurtenant rights on first registration**

TEXT AND NOTES--SI 2003/1417 r 33(3) added: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/ (v) Appurtenant Rights and Charges and Miscellaneous Entries/844. Entry of burdens on first registration.

### **844. Entry of burdens on first registration.**

On first registration the Chief Land Registrar<sup>1</sup> must enter a notice in the register<sup>2</sup> of the burden of any interest which appears from his examination of the title<sup>3</sup> to affect the registered estate<sup>4</sup>. This does not, however, apply: (1) to an interest that cannot<sup>5</sup> be protected by notice under the Land Registration Act 2002<sup>6</sup>; (2) a public right<sup>7</sup>; (3) a local land charge<sup>8</sup>; or (4) an interest which appears to the registrar to be of a trivial or obvious character, or the entry of a notice in respect of which would be likely to cause confusion or inconvenience<sup>9</sup>.

- 1 As to first registration see PARA 826 ante. As to the Chief Land Registrar see PARA 1066 post.
- 2 As to the register of title see PARA 811 et seq post; and as to notices see PARA 995 et seq post.
- 3 As to examination of title see PARA 833 ante.
- 4 Land Registration Rules 2003, SI 2003/1417, r 35(1).
- 5 I.e. an interest that under the Land Registration Act 2002 s 33 or s 90(4) (see PARAS 843 ante, 917-918 post) cannot be protected by notice: Land Registration Rules 2003, SI 2003/1417, r 32(2).
- 6 Ibid r 35(2)(a).
- 7 Ibid r 35(2)(b).
- 8 Ibid r 35(2)(c). As to local land charges see the Land Registration Act 2002 Sch 1 para 6; para 866 post; and LAND CHARGES.
- 9 Land Registration Rules 2003, SI 2003/1417, r 35(2)(d).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/ (v) Appurtenant Rights and Charges and Miscellaneous Entries/845. Entry as to rights of light or air on first registration.

#### **845. Entry as to rights of light or air on first registration.**

On first registration, if it appears to the Chief Land Registrar<sup>1</sup> that an agreement prevents the acquisition of rights of light and air for the benefit of the registered estate, he may make an entry in the property register<sup>2</sup> of that estate<sup>3</sup>.

- 1 As to the Chief Land Registrar see PARA 1066 post.
- 2 As to the property register see PARAS 813-814 ante.
- 3 Land Registration Rules 2003, SI 2003/1417, r 36.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/ (v) Appurtenant Rights and Charges and Miscellaneous Entries/846. Registration of a proprietor of a charge.

#### **846. Registration of a proprietor of a charge.**

Where an application for first registration is made: (1) by the owner of an estate that is subject to a legal charge created as a protected first legal mortgage of a qualifying estate<sup>1</sup>; or (2) by a



mortgagee in the name of a mortgagor<sup>2</sup>, the Chief Land Registrar<sup>3</sup> must enter the mortgagee of that legal charge as the proprietor of that charge if he is satisfied of that person's entitlement<sup>4</sup>.

The registrar must enter the mortgagee of a legal mortgage which is either a charge on the legal estate that is being registered or is a charge on such a charge, and which is not a charge falling within other provisions of the rules<sup>5</sup>, as the proprietor of that charge if on first registration of the legal estate<sup>6</sup> charged by that charge he is satisfied of that person's entitlement<sup>7</sup>.

1    Is a legal charge falling within the Land Registration Act 2002 s 4(1)(g) (see PARA 827 ante): Land Registration Rules 2003, SI 2003/1417, r 22(1)(b).

2    Is under *ibid* r 21 (see PARA 828 ante): r 22(1)(a).

3    As to the Chief Land Registrar see PARA 1066 post.

4    Land Registration Rules 2003, SI 2003/1417, r 22(2).

5    Is *ibid* r 22 or r 38 (see PARA 828 ante): r 34(2).

6    For the meaning of 'legal estate' see PARA 823 note 2 ante.

7    Land Registration Rules 2003, SI 2003/1417, r 34(1).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/ (v) Appurtenant Rights and  
Charges and Miscellaneous Entries/847. Foreshore.

#### **847. Foreshore.**

Where it appears to the Chief Land Registrar<sup>1</sup> that any land<sup>2</sup> included in an application for first registration comprises foreshore<sup>3</sup>, he must serve a notice of that application on:

- 80    (1)    the Crown Estate Commissioners, in every case<sup>4</sup>;
- 81    (2)    the Chancellor of the Duchy of Lancaster, in the case of land in the county palatine of Lancaster<sup>5</sup>;
- 82    (3)    the appropriate person, in the case of land in the counties of Devon and Cornwall and in the Isles of Scilly<sup>6</sup> and in the case of land within the jurisdiction of the Port of London Authority<sup>7</sup>; and
- 83    (4)    the Port of London Authority, in the case of land within its jurisdiction<sup>8</sup>.

Such a notice must provide a period ending at 12 noon on the twentieth business day<sup>9</sup> after the date of issue of the notice in which to object to the application<sup>10</sup>.

A notice need not be so served<sup>11</sup> where, if it was served, it would result in it being served on the applicant for first registration<sup>12</sup>.

1    As to the Chief Land Registrar see PARA 1066 post.

2    As to the meaning of 'land' see PARA 826 note 4 ante.

3    'Foreshore' has the meaning given by the Land Registration Act 2002 s 97, Sch 6 para 13(3) (see PARA 1034 note 5 post): Land Registration Rules 2003, SI 2003/1417, r 31(4).

4    *Ibid* r 31(1)(a). As to the Crown Estate Commissioners see CROWN PROPERTY vol 12(1) (Reissue) PARA 280 et seq.

5 Ibid r 31(1)(b). As to the Chancellor of the Duchy of Lancaster see CROWN PROPERTY vol 12(1) (Reissue) PARA 305; and as to the Duchy of Lancaster see CROWN PROPERTY vol 12(1) (Reissue) PARA 300 et seq.

6 'The appropriate person' for these purposes means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints: ibid r 31(4). As to the Duchy of Cornwall see CROWN PROPERTY vol 12(1) (Reissue) PARA 318 et seq.

7 Ibid r 31(1)(c). As to the Port of London Authority see PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 623 et seq.

8 Ibid r 31(1)(d).

9 'Business day' means a day the Land Registry is open to the public under r 216 (see PARA 1065 post): r 217(1). As to the substituted period where there has been a notice under r 216(2) see PARA 1065 post. As to the Land Registry see PARA 1064 et seq post.

10 Ibid r 31(2).

11 Ie served under ibid r 31(1): see the text and notes 1-8 supra.

12 Ibid r 31(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/ (v) Appurtenant Rights and Charges and Miscellaneous Entries/848. Note as to inclusion or exclusion of mines and minerals.

#### **848. Note as to inclusion or exclusion of mines and minerals.**

Where on first registration of an estate in land<sup>1</sup> which comprises or includes the land beneath the surface, the Chief Land Registrar<sup>2</sup> is satisfied that the mines and minerals<sup>3</sup> are included in or excluded from the applicant's title he may make an appropriate note in the register<sup>4</sup>.

Where (1) a registered estate<sup>5</sup> in land includes any mines or minerals but there is no note in the register that the title to the registered estate includes the mines or minerals<sup>6</sup>; and (2) it is appropriate<sup>7</sup> when describing the registered estate to do so by reference to the land where the mines or minerals are or may be situated<sup>8</sup>, after the description required to be made in the property register under the relevant rule<sup>9</sup> the registrar may make an entry to the effect that the description is an entry made under that rule and is not a note that the registered estate includes the mines or minerals to which the provision on indemnities<sup>10</sup> refers<sup>11</sup>.

Where a registered estate includes any mines or minerals but there is no note in the register to that effect and the registered proprietor of the registered estate applies for a note to be entered that the registered estate includes the mines or minerals or specified mines or minerals<sup>12</sup>, the application for the entry of the note must be accompanied by evidence to satisfy the registrar that the mines or minerals were vested in the applicant for first registration of the registered estate at the time of first registration and were so vested in the same capacity as the remainder of the estate in land then sought to be registered<sup>13</sup>. If the registrar is satisfied that mines or minerals were so vested in that applicant he must enter the appropriate note<sup>14</sup>.

1 As to the meaning of 'land' see PARA 826 note 4 ante.

2 As to the Chief Land Registrar see PARA 1066 post.

3 As to the meaning of 'mines and minerals' see PARA 826 note 4 ante.

4 Land Registration Rules 2003, SI 2003/1417, r 32. As to the register of title see PARA 811 et seq post.

- 5 For the meaning of 'registered estate' see PARA 861 note 3 post.
- 6 Land Registration Rules 2003, SI 2003/1417, r 70(1)(a).
- 7 Eg because of a registrable disposition of part of the registered estate, or on a sub-division or amalgamation of a registered title: see *ibid* r 70(1)(b). As to registrable dispositions see PARA 911 et seq post.
- 8 *Ibid* r 70(1)(b).
- 9 *Ie* under *ibid* r 5(a) (see PARA 814 ante).
- 10 *Ie* the Land Registration Act 2002 s 103, Sch 8 para 2 (see PARA 984 post).
- 11 Land Registration Rules 2003, SI 2003/1417, r 70(2).
- 12 *Ibid* r 71(1).
- 13 *Ibid* r 71(2).
- 14 *Ibid* r 71(3).

## UPDATE

### 848 Note as to inclusion or exclusion of mines and minerals

TEXT AND NOTES--SI 2003/1417 rr 70, 71 substituted: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/ (vi) Cautions against First  
Registration/A. THE CAUTIONS REGISTER/849. Requirement to keep cautions register.

## (vi) Cautions against First Registration

### A. THE CAUTIONS REGISTER

#### 849. Requirement to keep cautions register.

The Chief Land Registrar<sup>1</sup> must keep a register of cautions against first registration<sup>2</sup>.

Rules<sup>3</sup> may make provision about how the cautions register is to be kept and may, in particular, make provision about:

- 84 (1) the information to be included in the register<sup>4</sup>;
- 85 (2) the form in which information included in the register is to be kept<sup>5</sup>; and
- 86 (3) the arrangement of that information<sup>6</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 Land Registration Act 2002 s 19(1). As to the lodging, withdrawal and cancellation of cautions against first registration see PARAS 854-858 post.

3 As to the rules made see PARA 850 et seq post. As to land registration rules generally see PARA 1125 post.

4 Land Registration Act 2002 s 19(2)(a).

5 *Ibid* s 19(2)(b).

6 Ibid s 19(2)(c).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/ (vi) Cautions against First Registration/A. THE CAUTIONS REGISTER/850. Form and arrangement of the cautions register.

### **850. Form and arrangement of the cautions register.**

The cautions register<sup>1</sup> may be kept in electronic or paper form, or partly in one form and partly in the other<sup>2</sup>. On registration of a caution, the Chief Land Registrar<sup>3</sup> may open an individual caution register for each separate area of land<sup>4</sup> affected by the caution as he designates<sup>5</sup>. Subject to this, the cautions register comprises an individual caution register for each caution against the registration of title to an unregistered estate<sup>6</sup>.

1 As to the requirement to keep a register of cautions against first registration of title see PARA 849 ante.

2 Land Registration Rules 2003, SI 2003/1417, r 40(1).

3 As to the Chief Land Registrar see PARA 1066 post.

4 As to the meaning of 'land' see PARA 826 note 4 ante.

5 Land Registration Rules 2003, SI 2003/1417, r 40(3).

6 Ibid r 40(2). As to individual caution registers see PARA 851 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/ (vi) Cautions against First Registration/A. THE CAUTIONS REGISTER/851. Arrangement of individual caution registers.

### **851. Arrangement of individual caution registers.**

Each individual caution register<sup>1</sup> must:

- 87 (1) have a distinguishing number, or series of letters and numbers, known as the title number<sup>2</sup>;
- 88 (2) be in two parts, called the caution property register and the cautioner's register<sup>3</sup>.

The caution property register must contain a description of the legal estate<sup>4</sup> to which the caution relates and a description of the relevant interest<sup>5</sup>. Where the legal estate to which the caution relates is an estate in land<sup>6</sup>, a rentcharge, or an affecting franchise<sup>7</sup>, the description must refer to a caution plan, which must be based on the Ordnance Survey map<sup>8</sup>.

The cautioner's register must contain:

- 89 (a) the name of the cautioner<sup>9</sup>, including, where the cautioner is a company registered under the Companies Acts<sup>10</sup> or a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000, its registered number<sup>11</sup>;
- 90 (b) an address for service<sup>12</sup>; and

- 91 (c) where appropriate, details of any person consenting<sup>13</sup> to the lodging of a caution<sup>14</sup>.

1 An 'individual caution register' is the register so named in the Land Registration Rules 2003, SI 2003/1417, r 41(1), the arrangement of which is described in r 41(2) (see head (2) in the text): r 217(1).

2 Ibid r 41(1).

3 Ibid r 41(2). The 'cautioner's register' is the register so named in r 41(2), the contents of which are described in r 41(5) (see heads (a)-(c) in the text): see r 39.

4 For the meaning of 'legal estate' see PARA 823 note 2 ante.

5 Land Registration Rules 2003, SI 2003/1417, r 41(3). For the meaning of 'relevant interest' see PARA 858 note 12 post.

6 As to the meaning of 'land' see PARA 826 note 4 ante.

7 For the meaning of 'affecting franchise' see PARA 814 note 4 ante.

8 Land Registration Rules 2003, SI 2003/1417, r 41(4). As to the Ordnance Survey see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1110 et seq.

9 For the meaning of 'cautioner' see PARA 856 note 5 post.

10 For the meaning of the 'the Companies Acts' see PARA 815 note 4 ante.

11 Land Registration Rules 2003, SI 2003/1417, r 41(5)(a).

12 Ibid r 41(5)(b). As to the address for service see r 198; and PARA 1130 post.

13 Ie under ibid r 47: see PARA 858 ante.

14 Ibid r 41(5)(c).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/ (vi) Cautions against First Registration/A. THE CAUTIONS REGISTER/852. Alteration of the cautions register by the court.

## **852. Alteration of the cautions register by the court.**

The court<sup>1</sup> may make an order for alteration of the cautions register<sup>2</sup> for the purpose of: (1) correcting a mistake<sup>3</sup>; or (2) bringing the register up to date<sup>4</sup>. Such an order has effect when served on the Chief Land Registrar<sup>5</sup> to impose a duty on him to give effect to it<sup>6</sup>. Rules<sup>7</sup> may make provision about the circumstances in which there is a duty to exercise this power of the court<sup>8</sup>, the form of such an order<sup>9</sup> and service of such an order<sup>10</sup>.

If in any proceedings the court decides that the cautioner<sup>11</sup> does not own the relevant interest<sup>12</sup>, or only owns part of it, or that such interest either wholly or in part did not exist or has come to an end, the court must make an order for alteration of the cautions register under the provisions described above<sup>13</sup>.

1 For the meaning of 'the court' see PARA 1206 post.

2 'Cautions register' means the register kept under the Land Registration Act 2002 s 19(1) (see PARA 850 ante): s 132(1).

3 As to the meaning of 'mistake' see PARA 977 post.

- 4 Land Registration Act 2002 s 20(1).
- 5 As to the Chief Land Registrar see PARA 1066 post.
- 6 Land Registration Act 2002 s 20(2). For these purposes, an order for alteration of the cautions register may only be served on the registrar by making an application for him to give effect to the order: Land Registration Rules 2003, SI 2003/1417, r 48(3).
- 7 As to land registration rules generally see PARA 1125 post.
- 8 Land Registration Act 2002 s 20(3)(a). See the Land Registration Rules 2003, SI 2003/1417, r 48(1); and the text and notes 11-13 infra.
- 9 Land Registration Act 2002 s 20(3)(b). An order for alteration of the cautions register must state the title number of the individual caution register affected, describe the alteration that is to be made and direct the registrar to make the alteration: Land Registration Rules 2003, SI 2003/1417, r 48(2). For the meaning of 'individual caution register' see PARA 851 note 1 ante.
- 10 Land Registration Act 2002 s 20(3)(c).
- 11 For the meaning of 'cautioner' see PARA 856 note 5 post.
- 12 For the meaning of 'relevant interest' see PARA 858 note 12 post.
- 13 Land Registration Rules 2003, SI 2003/1417, r 48(1).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
 REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/ (vi) Cautions against First  
 Registration/A. THE CAUTIONS REGISTER/853. Alteration of the cautions register by the Chief  
 Land Registrar.

### **853. Alteration of the cautions register by the Chief Land Registrar.**

The Chief Land Registrar<sup>1</sup> may alter the cautions register<sup>2</sup> for the purpose of: (1) correcting a mistake<sup>3</sup>; or (2) bringing the register up to date<sup>4</sup>. Rules<sup>5</sup> may make provision about:

- 92 (a) the circumstances in which there is a duty to exercise that power;
- 93 (b) how the cautions register is to be altered in exercise of that power;
- 94 (c) applications for the exercise of that power; and
- 95 (d) procedure in relation to the exercise of that power, whether on application or otherwise<sup>6</sup>.

If the registrar is satisfied that the cautioner<sup>7</sup> does not own the relevant interest<sup>8</sup>, or only owns part, or that such interest did not exist or has come to an end wholly or in part, he must on the application of any person alter the cautions register under the power described above<sup>9</sup>.

Any person who wishes the registrar to alter the cautions register<sup>10</sup> must request the registrar to do so by application which must include written details of the alteration required and of the grounds on which the application is made, and any supporting document<sup>11</sup>. Before the registrar alters the cautions register he must serve a notice on the cautioner giving details of the application, unless the registrar is satisfied that service of the notice is unnecessary<sup>12</sup>.

A person who claims that the whole of the relevant interest described in an individual caution register<sup>13</sup> is vested in him by operation of law as successor to the cautioner may apply for the register to be altered to show him as cautioner in the cautioner's register<sup>14</sup>, in place of the cautioner<sup>15</sup>. If the registrar does not serve notice on the cautioner<sup>16</sup> or if the cautioner does not object within the time specified in the notice, the registrar must give effect to the application<sup>17</sup>.

Where an alteration is made under these provisions, the registrar may pay such amount as he thinks fit in respect of any costs reasonably incurred by a person in connection with the alteration<sup>18</sup>.

- 1 As to the Chief Land Registrar see PARA 1066 post.
- 2 For the meaning of 'cautions register' see PARA 852 note 2 ante.
- 3 As to the meaning of 'mistake' see PARA 977 post.
- 4 Land Registration Act 2002 s 21(1).
- 5 As to land registration rules generally see PARA 1125 post.
- 6 Land Registration Act 2002 s 21(2).
- 7 For the meaning of 'cautioner' see PARA 856 note 5 post.
- 8 For the meaning of 'relevant interest' see PARA 858 note 12 post.
- 9 Land Registration Rules 2003, SI 2003/1417, r 49.
- 10 Ie under the Land Registration Act 2002 s 21(1): see the text and notes 1-4 supra.
- 11 Land Registration Rules 2003, SI 2003/1417, r 50(1).
- 12 Ibid r 50(2). As to service of notice by the registrar see PARA 1130 post.
- 13 For the meaning of 'individual caution register' see PARA 851 note 1 ante.
- 14 As to the cautioner's register see PARA 851 ante.
- 15 Land Registration Rules 2003, SI 2003/1417, r 51(1).
- 16 Ie notice under ibid r 50(2): see the text and note 12 supra.
- 17 Ibid r 51(2).
- 18 Land Registration Act 2002 s 21(3).

## **UPDATE**

### **853 Alteration of the cautions register by the Chief Land Registrar**

TEXT AND NOTES 7-9--SI 2003/1417 r 49 substituted: SI 2008/1919.

TEXT AND NOTES 13-15--SI 2003/1417 r 51(1) amended: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/ (vi) Cautions against First Registration/B. LODGING, WITHDRAWAL AND CANCELLATION OF CAUTIONS/854. The right to lodge a caution against first registration.

## ***B. LODGING, WITHDRAWAL AND CANCELLATION OF CAUTIONS***

### **854. The right to lodge a caution against first registration.**

A person may lodge a caution against the registration of title<sup>1</sup> to an unregistered legal estate<sup>2</sup> if he claims to be: (1) the owner of a qualifying estate; or (2) entitled to an interest affecting a qualifying estate<sup>3</sup>. For these purposes a qualifying estate is a legal estate which relates to land<sup>4</sup> to which the caution relates<sup>5</sup> and is an interest of any of the following kinds:

- 96 (a) an estate in land;
- 97 (b) a rentcharge;
- 98 (c) a franchise; and
- 99 (d) a profit à prendre in gross<sup>6</sup>.

The right to lodge a caution is exercisable by application to the Chief Land Registrar<sup>7</sup>. The application must be made in the prescribed form<sup>8</sup> and must contain sufficient details, by plan or otherwise, so that the extent of the land to which the caution relates can be identified clearly on the Ordnance Survey map<sup>9</sup>.

A person must not exercise the right to lodge a caution without reasonable cause<sup>10</sup> and this duty is owed to any person who suffers damage in consequence of its breach<sup>11</sup>.

The right to lodge a caution against first registration of a person's own registrable estate will no longer be exercisable after 13 October 2005<sup>12</sup>.

Special provision is made with regard to the lodging of cautions against first registration of demesne land<sup>13</sup>.

1 In the Land Registration Act 2002, 'caution against first registration' means a caution lodged under s 15 (s 132(1)); but the Land Registration Act 2002 applies as if this definition included cautions lodged under the Land Registration Act 1925 s 53 (repealed) (Land Registration Act 2002 s 134(2), Sch 12 para 16).

2 For the meaning of 'legal estate' see PARA 823 note 2 ante.

3 Land Registration Act 2002 s 15(1) (amended by s 134(2), Sch 12 para 14(1)(a). The amendment made to this provision is effective for a transitional period, and enables s 15(1) to have effect without qualification by s 15(3) (see PARA 855 post).

Notwithstanding the repeal of the Land Registration Act 1925 s 53, the provisions of s 53(1), (2) (repealed) continue to have effect in relation to an application to lodge a caution against first registration which was pending immediately before the repeal of those provisions (ie 13 October 2003): see the Land Registration Act 2002 Sch 12 para 6.

4 As to the meaning of 'land' see PARA 826 note 4 ante.

5 Land Registration Act 2002 s 15(2)(a).

6 Ibid s 15(2)(b).

7 Ibid s 15(4). As to the Chief Land Registrar see PARA 1066 post. As to applications to the registrar see PARA 1075 et seq post. Anyone may object to the application: see s 73(1); and PARAS 1004, 1081 post.

8 As to the prescribed form see the Land Registration Rules 2003, SI 2003/1417, r 42, Sch 1 Form CT1. As to the use of forms generally see PARA 1087 et seq post.

9 Ibid r 42. As to the Ordnance Survey see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1110 et seq.

10 Land Registration Act 2002 s 77(1)(a).

11 Ibid s 77(2). Notwithstanding the repeal of the Land Registration Act 1925 s 56(3), that provision continues to have effect in relation to cautions against first registration lodged under that Act, or any enactment replaced (directly or indirectly) by that Act: Land Registration Act 2002 s 134(2), Sch 12 para 4. The Land Registration Act 1925 s 56(3) (repealed) provides that any person who has lodged such a caution with the registrar without reasonable cause is liable to make to any person who may have sustained damage by the lodging of the caution such compensation as may be just, and such compensation is recoverable as a debt by the person who has sustained damage from the person who lodged the caution.



12 See PARA 855 post.

13 See the Land Registration Act 2002 s 81, Sch 12 para 15; and PARA 885 post.

## UPDATE

### 854 The right to lodge a caution against first registration

NOTE 8--SI 2003/1417 Sch 1 substituted: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/ (vi) Cautions against First Registration/B. LODGING, WITHDRAWAL AND CANCELLATION OF CAUTIONS/855. Abolition of certain owners' rights to lodge caution after transitional period.

### 855. Abolition of certain owners' rights to lodge caution after transitional period.

At the end of the period of two years from 13 October 2003<sup>1</sup>, the statutory right to lodge a caution will become subject to the following limitations<sup>2</sup>. In the case of the right to lodge a caution by a person claiming to be the owner of a qualifying estate<sup>3</sup>, no caution may thereafter be lodged by virtue of ownership of a freehold estate in land, or a leasehold estate in land granted for a term of which more than seven years are unexpired<sup>4</sup>; while in the case of the right to lodge a caution by a person claiming to be entitled to an interest affecting a qualifying estate<sup>5</sup>, no caution may thereafter be lodged by virtue of ownership of a leasehold estate in land granted for a term of which more than seven years are unexpired<sup>6</sup>. Any such caution which is in force immediately before the end of the two-year period mentioned above will cease to have effect at the end of that period, except in relation to applications for registration made before the end of that period<sup>7</sup>. The purpose of these provisions is to ensure that those who could protect their estate by voluntary registration<sup>8</sup> will do so rather than use the caution against first registration<sup>9</sup>.

1    Ie at the end of the period of two years beginning with the day on which the Land Registration Act 2002 s 15 (see PARA 854 ante) came into force: s 134(2), Sch 12 para 14(1). Section 15 came into force on 13 October 2003: see the Land Registration Act 2002 (Commencement No 4) Order 2003, SI 2003/1725, art 2.

2    Land Registration Act 2002 s 15(1), Sch 12 para 14(1)(a), (b). As to the statutory right to lodge a caution see PARA 854 ante.

3    Ie in the case of *ibid* s 15(1)(a): see PARA 854 head (1) ante.

4    *Ibid* s 15(3)(a) (not yet in force). Section 15(3) is to come into force on 13 October 2005: see Sch 12 para 14(1)(b). The Lord Chancellor may by order substitute for the term specified in the text such shorter term as he thinks fit: s 118(1)(c); and see PARA 826 note 6 ante. At the date at which this volume states the law, no such order had been made. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5    Ie in the case of *ibid* s 15(1)(b): see PARA 854 head (2) ante.

6    *Ibid* s 15(3)(b) (not yet in force: see note 4 supra). As to the Lord Chancellor's power to specify a shorter term see note 4 supra.

7    *Ibid* Sch 12 para 14(2).

8    See *ibid* s 3; and PARA 826 ante.

9    See *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 3.58.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
 REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/ (vi) Cautions against First  
 Registration/B. LODGING, WITHDRAWAL AND CANCELLATION OF CAUTIONS/856. Effect of  
 caution against first registration.

### **856. Effect of caution against first registration.**

Where an application for first registration<sup>1</sup> relates to a legal estate<sup>2</sup> which is the subject of a caution against such registration<sup>3</sup>, the Chief Land Registrar<sup>4</sup> must give the cautioner<sup>5</sup> notice of the application<sup>6</sup> and of his right to object to it<sup>7</sup>. The registrar may not determine such an application before the end of such period as rules may provide<sup>8</sup>, unless the cautioner has exercised his right to object to the application or given the registrar notice that he does not intend to do so<sup>9</sup>.

Except as provided above, a caution against first registration has no effect and, in particular, has no effect on the validity or priority of any interest of the cautioner in the legal estate to which the caution relates<sup>10</sup>.

1    le an application under the Land Registration Act 2002 Pt 2 (ss 3-22): see PARA 826 et seq ante.

2    For the meaning of 'legal estate' see PARA 823 note 2 ante.

3    As to the right to lodge a caution against first registration see PARAS 854-855 ante.

4    As to the Chief Land Registrar see PARA 1066 post.

5    For these purposes, 'the cautioner', in relation to a caution against first registration, means the person who lodged the caution, or such other person as rules may provide: Land Registration Act 2002 s 22. The other person referred to the person for the time being shown as cautioner in the cautions register, where that person is not the person who lodged the caution against first registration: Land Registration Rules 2003, SI 2003/1417, rr 39, 52. As to the cautions register see PARA 849 et seq post.

6    For these purposes, notice given by a person acting on behalf of an applicant for registration under the Land Registration Act 2002 Pt 2 is to be treated as given by the registrar if: (1) the person is of a description provided by rules; and (2) notice is given in such circumstances as rules may provide: s 16(4).

7    Ibid s 16(1). Any person may object to the application: see s 73(1); and PARAS 1004, 1081 post.

8    The prescribed period for this purpose is the same period as the cautioner has to exercise his right to object to an application for cancellation under *ibid* s 18(4), as provided by the Land Registration Rules 2003, SI 2003/1417, r 53(2) (see PARA 858 post): r 53(1). As to the substituted period where there has been a notice under r 216(2) see PARA 1065 post.

9    Land Registration Act 2002 s 16(2).

10   Ibid s 16(3).

### **UPDATE**

### **856 Effect of caution against first registration**

NOTE 5--SI 2003/1417 r 52 substituted: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/ (vi) Cautions against First Registration/B. LODGING, WITHDRAWAL AND CANCELLATION OF CAUTIONS/857. Withdrawal of caution against first registration.

### **857. Withdrawal of caution against first registration.**

The cautioner<sup>1</sup> may withdraw a caution against first registration<sup>2</sup> by application to the Chief Land Registrar<sup>3</sup>. The application must be made in the prescribed form<sup>4</sup> and, if the application is made in respect of part only of the land<sup>5</sup> to which the individual caution register<sup>6</sup> relates, it must contain sufficient details, by plan or otherwise, so that the extent of that part can be identified clearly on the Ordnance Survey map<sup>7</sup>.

1 For the meaning of 'the cautioner' see PARA 856 note 5 ante.

2 As to cautions against first registration see PARAS 854-856 ante.

3 Land Registration Act 2002 s 17. As to the Chief Land Registrar see PARA 1066 post. As to applications to the registrar generally see PARA 1077 et seq post. Any person may object to the application: see s 73(1); and PARAS 1004, 1081 post.

4 As to the prescribed form see the Land Registration Rules 2003, SI 2003/1417, r 43, Sch 1 Form WCT. As to the use of forms generally see PARA 1087 et seq post.

5 As to the meaning of 'land' see PARA 826 note 4 ante.

6 As to individual caution registers see PARA 851 ante.

7 Land Registration Rules 2003, SI 2003/1417, r 43. As to the Ordnance Survey see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1110 et seq.

## **UPDATE**

### **857 Withdrawal of caution against first registration**

NOTE 4--SI 2003/1417 Sch 1 Form WCT substituted by SI 2008/1919; and amended by SI 2009/1996.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(4) FIRST REGISTRATION/ (vi) Cautions against First Registration/B. LODGING, WITHDRAWAL AND CANCELLATION OF CAUTIONS/858. Cancellation of caution against first registration.

### **858. Cancellation of caution against first registration.**

A person may apply to the Chief Land Registrar<sup>1</sup> for cancellation of a caution against first registration<sup>2</sup> if he is: (1) the owner of the legal estate<sup>3</sup> to which the caution relates<sup>4</sup>; or (2) a person of such other description as rules<sup>5</sup> may provide<sup>6</sup>, that is, the owner of a legal estate derived out of the estate<sup>7</sup> to which the caution relates and, where the land to which the caution relates is demesne land, Her Majesty<sup>8</sup> or the owner of a legal estate affecting the demesne land<sup>9</sup>. No application under head (1) above may be made by a person who consented in such manner as rules may provide<sup>10</sup> to the lodging of the caution or who derives title to the legal estate by operation of law from a person who did so<sup>11</sup>. A person to whom this restriction applies may, however, make an application for cancellation of a caution against first registration if: (a)

the relevant interest<sup>12</sup> has come to an end; or (b) the consent referred to above was induced by fraud, misrepresentation, mistake or undue influence or was given under duress<sup>13</sup>.

An application for the cancellation of a caution against first registration must be in the prescribed form<sup>14</sup>. Where the application is made in respect of part only of the land<sup>15</sup> to which the individual caution register<sup>16</sup> relates, it must contain sufficient details, by plan or otherwise, so that the extent of that part can be identified clearly on the Ordnance Survey map<sup>17</sup>. Where a person applies and is the owner of the legal estate to which the caution relates, the owner of a legal estate derived out of that estate or the owner of a legal estate affecting demesne land<sup>18</sup>, evidence to satisfy the registrar that he is entitled to apply must accompany the application<sup>19</sup>. Where the applicant, or a person from whom the applicant derives title to the legal estate by operation of law, has consented to the lodging of the caution, evidence of the facts referred to in head (a) or head (b) above must accompany the application<sup>20</sup>.

Where an application is made<sup>21</sup> for cancellation of a caution against first registration, the registrar must give the cautioner notice of the application and of the consequences<sup>22</sup> if he fails to object within the prescribed period<sup>23</sup>.

Only the person who lodged the caution to which the application relates, or such other person as rules may provide<sup>24</sup>, may object to the application<sup>25</sup>. If the cautioner does not exercise his right to object to the application before the end of such period as rules may provide<sup>26</sup>, the registrar must cancel the caution<sup>27</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 As to cautions against first registration see PARAS 854-856 ante.

3 For the meaning of 'legal estate' see PARA 823 note 2 ante.

4 Land Registration Act 2002 s 18(1)(a).

5 As to land registration rules generally see PARA 1125 post.

6 Land Registration Act 2002 s 18(1)(b).

7 Land Registration Rules 2003, SI 2003/1417, r 45(a).

8 Ibid r 45(b)(i). Where an application is made for the cancellation of a caution against first registration by Her Majesty by virtue of r 45(b)(i), the prescribed form (see note 14 infra) must be used with such modifications to it as are appropriate and have been approved by the registrar: r 44(5).

9 Ibid r 45(b)(ii). As to demesne land see PARA 883 post.

10 A person consents to the lodging of a caution against first registration if, before the caution is entered in the cautions register, he has confirmed in writing to the registrar that he consents to the lodging of the caution, and that consent is produced to the registrar: *ibid* r 47. As to the cautions register see PARA 849 et seq ante.

11 Land Registration Act 2002 s 18(2).

12 For these purposes, 'relevant interest' means the interest claimed by the cautioner in the unregistered legal estate to which the caution against first registration relates: Land Registration Rules 2003, SI 2003/1417, r 39. For the meaning of 'cautioner' see PARA 856 note 5 ante.

13 Ibid r 46.

14 Ibid r 44(1). As to the prescribed form see r 44(1), Sch 1 Form CCT: see r 44(1).

15 As to the meaning of 'land' see PARA 826 note 4 ante.

16 As to individual caution registers see PARA 851 ante.

17 Land Registration Rules 2003, SI 2003/1417, r 44(2).

18 le where a person applies under the Land Registration Act 2002 s 18(1)(a) or the Land Registration Rules 2003, SI 2003/1417, r 45(a) or r 45(b)(ii).

19 Ibid r 44(3).

20 Ibid r 44(4).

21 le under the Land Registration Act 2002 s 18(1): see the text and notes 1-6 supra.

22 le notice of the effect of ibid s 18(4) (see the text and notes 26-27 infra).

23 Ibid s 18(3).

24 As to the other person see the Land Registration Rules 2003, SI 2003/1417, r 52; and PARA 856 note 5 ante.

25 Land Registration Act 2002 s 73(2).

26 The prescribed period for the purpose of the Land Registration Act 2002 s 16(2) and s 18(4) is the period ending at 12 noon on the fifteenth business day after the date of issue of the notice under s 16(1) or s 18(3), or such longer period as the registrar may allow following a request under the Land Registration Rules 2003, SI 2003/1417, r 53(2), provided that the longer period never exceeds a period ending at 12 noon on the thirtieth business day after the issue of the notice: r 53(1). The request referred to is one by the cautioner to the registrar setting out why the longer period referred to in r 53(1) should be allowed: r 53(2). If such a request is received, the registrar may, if he considers it appropriate, seek the views of the person who applied for cancellation and if, after considering any such views and all other relevant matters, he is satisfied that a longer period should be allowed, he may allow such period (not exceeding a period ending at 12 noon on the thirtieth day after the issue of the notice) as he considers appropriate, whether or not the period is the same as any period requested by the cautioner: r 53(3). A request under r 53(2) must be made before the period ending at 12 noon on the fifteenth day after the date of issue of the notice under the Land Registration Act 2002 s 18(3) has expired: Land Registration Rules 2003, SI 2003/1417, r 53(4). As to the substituted periods where there has been a notice under r 216(2) see PARA 1065 post.

27 Land Registration Act 2002 s 18(4).

## **UPDATE**

### **858 Cancellation of caution against first registration**

NOTE 14--SI 2003/1417 Sch 1 Form CCT substituted by SI 2008/1919; and amended by SI 2009/1996.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(5) GENERAL EFFECT OF REGISTRATION/(i) Registration as Proprietor/859. Conclusiveness of registration.

## **(5) GENERAL EFFECT OF REGISTRATION**

### **(i) Registration as Proprietor**

#### **859. Conclusiveness of registration.**

If, on the entry of a person in the register<sup>1</sup> as the proprietor of a legal estate<sup>2</sup>, the legal estate would not otherwise be vested in him<sup>3</sup>, it is deemed to be vested in him as a result of the registration<sup>4</sup>. This does not, however, apply where the entry is made in pursuance of a registrable disposition<sup>5</sup> in relation to which some other registration requirement remains to be met<sup>6</sup>.

- 1 As to the register of title see PARA 811 et seq post.
- 2 For the meaning of 'legal estate' see PARA 823 note 2 ante.
- 3 Eg where an error is made on registration as to the extent of the parcels or where the transfer to the registered proprietor was void: *Re 139 Deptford High Street, ex p British Transport Commission* [1951] Ch 884, [1951] 1 All ER 950. As to alteration and rectification of the register see PARA 976 et seq post.
- 4 Land Registration Act 2002 s 58(1).
- 5 For the meaning of 'registrable disposition' see PARA 911 post.
- 6 Land Registration Act 2002 s 58(2). As to registrable dispositions see PARA 911 et seq post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(5) GENERAL EFFECT OF REGISTRATION/(i) Registration as Proprietor/860. Effective date of registration.

### **860. Effective date of registration.**

An entry made in the register<sup>1</sup> in pursuance of an application for registration of an unregistered legal estate<sup>2</sup> or an application for registration in relation to a disposition required to be completed by registration<sup>3</sup>, has effect from the time of the making of the application<sup>4</sup>.

- 1 As to the register of title see PARA 811 et seq post.
- 2 For the meaning of 'legal estate' see PARA 823 note 2 ante. As to first registration see PARA 826 et seq ante.
- 3 As to dispositions required to be completed by registration see PARA 911 et seq post.
- 4 Land Registration Act 2002 s 74. As to priority protection see s 72; and PARAS 1110, 1144 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(5) GENERAL EFFECT OF REGISTRATION/(i) Registration as Proprietor/861. Dependent estates.

### **861. Dependent estates.**

The entry of a person in the register<sup>1</sup> as the proprietor of a legal estate<sup>2</sup> which subsists for the benefit of a registered estate<sup>3</sup> must be made in relation to the registered estate<sup>4</sup>.

The entry of a person in the register as the proprietor of a charge<sup>5</sup> on a registered estate must be made in relation to that estate<sup>6</sup>.

The entry of a person in the register as the proprietor of a sub-charge<sup>7</sup> on a registered charge<sup>8</sup> must be made in relation to that charge<sup>9</sup>.

- 1 As to the register of title see PARA 811 et seq post.
- 2 For the meaning of 'legal estate' see PARA 823 note 2 ante.
- 3 'Registered estate' means a legal estate the title to which is entered in the register, other than a registered charge (see note 8 infra): Land Registration Act 2002 s 132(1).

- 4 Ibid s 59(1).
- 5 'Charge' means any mortgage, charge or lien for securing money or money's worth: ibid s 132(1).
- 6 Ibid s 59(2).
- 7 'Sub-charge' means a charge under ibid s 23(2)(b) (see PARAS 906-907 post): s 132(1).
- 8 'Registered charge' means a charge the title to which is entered in the register: ibid s 132(1).
- 9 Ibid s 59(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(5) GENERAL EFFECT OF REGISTRATION/(i) Registration as Proprietor/862. Right to exercise owner's powers.

## **862. Right to exercise owner's powers.**

A person is entitled to exercise owner's powers<sup>1</sup> in relation to a registered estate<sup>2</sup> or charge<sup>3</sup> if he is: (1) the registered<sup>4</sup> proprietor; or (2) entitled to be registered as the proprietor<sup>5</sup>.

- 1 As to owner's powers see the Land Registration Act 2002 s 23; and PARAS 906-907 post.
- 2 For the meaning of 'registered estate' see PARA 861 note 3 ante.
- 3 For the meaning of 'registered charge' see PARA 861 note 8 ante.
- 4 For the meaning of 'registered' see PARA 826 note 2 ante. As to the conclusiveness of registration as the proprietor see PARA 859 ante.
- 5 Land Registration Act 2002 s 24.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(5) GENERAL EFFECT OF REGISTRATION/(ii) Unregistered Interests which Override First Registration/863. Introduction.

## **(ii) Unregistered Interests which Override First Registration**

### **863. Introduction.**

Under the Land Registration Act 1925, all registered land was, unless under the provisions of that Act the contrary was expressed on the register, deemed to be subject to such of a number of specified overriding interests as might be for the time being subsisting in reference to it<sup>1</sup>; and 'overriding interests' were defined as all the incumbrances, interests, rights, and powers not entered on the register but subject to which registered dispositions were by that Act to take effect, including the matters which were declared not to be incumbrances by any enactment repealed by that Act<sup>2</sup>. The Land Registration Act 1925 (as subsequently amended) listed in all 14 separate categories of overriding interests<sup>3</sup> and an additional category was set out in the Land Registration Rules 1925<sup>4</sup>.

The Land Registration Act 2002 amends the law with regard to overriding interests in a number of respects<sup>5</sup>. The term 'overriding interests' is not employed because such interests are now divided into two distinct lists: unregistered interests which override first registration, set out in

Schedule 1 to the Act<sup>6</sup>; and unregistered interests which override registered dispositions, set out in Schedule 3<sup>7</sup>. The latter are considered elsewhere in this title<sup>8</sup>.

The liability to repair the chancel of a church, which was an overriding interest under the Land Registration Act 1925<sup>9</sup>, has been extended for ten years<sup>10</sup>. For that ten-year period such liability is listed in both Schedule 1 and Schedule 3 to the Land Registration Act 2002<sup>11</sup>.

Because of the changes made by the Land Registration Act 2002 to the law of adverse possession<sup>12</sup>, rights acquired or in the course of being acquired under the Limitation Act 1980 are excluded from the categories of unregistered interests capable of overriding either first registration or registered dispositions<sup>13</sup>, but this is subject to transitional provisions<sup>14</sup>.

With regard to the unregistered interests listed in both Schedule 1 and Schedule 3 to the Land Registration Act 2002, provision is made for the abolition of five of the 14 categories listed at the end of the period of ten years beginning with 13 October 2003<sup>15</sup>. In the interim such interests may be protected either by lodging a caution against first registration<sup>16</sup> or by applying for the entry of a notice in the register<sup>17</sup> in respect of any such interest<sup>18</sup>.

Transitional provision is made with regard to former overriding interests<sup>19</sup>.

Applicants for first registration are now required to give details of any unregistered interests known to them which will override first registration<sup>20</sup>.

1 See the Land Registration Act 1925 s 70(1) (repealed).

2 See *ibid* s 3(xvi) (repealed).

3 See *ibid* s 70(1)(a)-(m) (repealed).

4 See the Land Registration Rules 1925, SR & O 1925/1093, r 258 (revoked).

5 The guiding principle on which the Land Registration Act 2002 proceeds is that interests should be overriding only where it is unreasonable to expect them to be protected in the register: *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARAS 2.25, 8.6.

6 See the Land Registration Act 2002 ss 11(4)(b), 12(4)(c), Sch 1; and PARA 866 post.

7 See *ibid* ss 29(2)(a)(ii), 30(2)(a)(ii), Sch 3; and PARA 962 post.

8 See PARA 962 post.

9 See the Land Registration Act 1925 s 70(1)(c) (repealed).

10 See the Land Registration Act 2002 (Transitional Provisions) (No 2) Order 2003, SI 2003/2431, art 2. This adds a new paragraph at the end of the Land Registration Act 2002 Sch 2 and at the end of Sch 3, each referring to a right in respect of the repair of a church cancel, and having effect for the period of ten years from the day on which the schedules came into force (ie 13 October 2002: see the Land Registration Act 2002 (Commencement No 4) Order 2003, SI 2003/1725, art 2). Thus parochial church councils have until 13 October 2013 in which to register the liability, or allow it to lapse. The Land Registration Act 2002 (Transitional Provisions) (No 2) Order 2003, SI 2003/2431, followed on from the decision in *Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank* [2003] UKHL 37, [2004] 1 AC 546, [2003] 3 All ER 1213.

11 See the Land Registration Act 2002 Sch 1 para 16, Sch 3 para 16 (both added by the Land Registration Act 2002 (Transitional Provisions) (No 2) Order 2003, SI 2003/2431, art 2). See also note 10 supra. As to the Land Registration Act 2002 Schs 1, 3 generally see PARAS 866, 962 post.

12 As to adverse possession see PARA 1021 et seq post.

13 Cf the Land Registration Act 1925 s 70(1)(f) (repealed). On first registration, however, the estate is vested subject to interests acquired under the Limitation Act 1980 of which the proprietor has notice: see the Land Registration Act 2002 ss 11(4)(c), 12(4)(d); and PARAS 835, 838 ante.

14 See *ibid* s 134(2), Sch 12 para 7; and PARA 866 post.

15 See *ibid* s 117(1); and PARA 867 post.



- 16 As to cautions against first registration see PARA 849 et seq ante.
- 17 As to notices see PARA 995 et seq post.
- 18 See the Land Registration Act 2002 s 117(2); and PARA 867 post.
- 19 See *ibid* Sch 12 paras 7-13; and PARA 866 post.
- 20 See *ibid* s 71; and PARAS 865, 961 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(5) GENERAL EFFECT OF REGISTRATION/(ii) Unregistered Interests which Override First Registration/864. Liability to unregistered interests on first registration of title.

#### **864. Liability to unregistered interests on first registration of title.**

On first registration with an absolute freehold<sup>1</sup> or leasehold<sup>2</sup> title, the estate is vested in the proprietor subject, among other matters, to any of the specified categories of unregistered interests<sup>3</sup> affecting the estate<sup>4</sup> at the time of registration which override first registration<sup>5</sup>. Registration with any lesser class of title has the like effect<sup>6</sup>.

- 1 As to first registration with absolute freehold title see PARA 835 ante.
- 2 As to first registration with absolute leasehold title see PARA 838 ante.
- 3 I.e. unregistered interests which fall within any of the paragraphs of the Land Registration Act 2002 ss 11(4)(b), 12(4)(c), Sch 1: see PARA 866 post.
- 4 For the meaning of references to an interest affecting an estate see PARA 835 note 8 ante.
- 5 Land Registration Act 2002 ss 11(4)(b), 12(4)(c).
- 6 See *ibid* ss 11(6), (7), 12(6)-(8); and PARAS 836-837, 839-841 ante.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(5) GENERAL EFFECT OF REGISTRATION/(ii) Unregistered Interests which Override First Registration/865. Duty to disclose unregistered interests.

#### **865. Duty to disclose unregistered interests.**

Where rules<sup>1</sup> so provide, a person applying for first registration<sup>2</sup> must provide to the Chief Land Registrar<sup>3</sup> such information as the rules may provide about any interest affecting the estate<sup>4</sup> to which the application relates which falls within any of the specified categories of unregistered interests overriding first registration<sup>5</sup> and which is of a description specified by the rules<sup>6</sup>.

- 1 See the Land Registration Rules 2003, SI 2003/1417, r 28; and PARA 832 ante. As to land registration rules generally see PARA 1125 post.
- 2 I.e. a person applying for registration under the Land Registration Act 2002 Pt 2 Ch 1 (ss 3-14): see PARA 826 et seq ante.
- 3 As to the Chief Land Registrar see PARA 1066 post.

4 For the meaning of 'interest affecting the estate' see PARA 835 note 8 ante.

5 le which fall within any of the paragraphs of the Land Registration Act 2002 ss 11(4)(b), 12(4)(c), Sch 1: see PARA 866 post.

6 Ibid s 71(a).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(5) GENERAL EFFECT OF REGISTRATION/(ii) Unregistered  
Interests which Override First Registration/866. Specified interests overriding first registration.

### **866. Specified interests overriding first registration.**

The unregistered interests which may override first registration are:

- 100 (1) a leasehold estate in land<sup>1</sup> granted for a term not exceeding seven years<sup>2</sup>  
from the date of the grant<sup>3</sup>, except for a lease the grant of which is the grant:  
7
15. (a) out of a qualifying estate<sup>4</sup> of an estate in land for a term of years absolute<sup>5</sup>  
to take effect in possession after the end of the period of three months beginning  
with the date of the grant<sup>6</sup>;
16. (b) the grant of a lease in pursuance of Part V of the Housing Act 1985 out of  
an unregistered legal estate in land<sup>7</sup>; or
17. (c) the grant of a lease out of an unregistered legal estate in land in  
circumstances where there is a disposal by a landlord which leads to a person no  
longer being a secure tenant<sup>8</sup>;
- 8
- 101 (2) an interest belonging to a person in actual occupation<sup>9</sup>, so far as relating to  
land of which he is in actual occupation, except for an interest under a settlement  
under the Settled Land Act 1925<sup>10</sup>;
- 102 (3) a legal easement or profit à prendre<sup>11</sup>;
- 103 (4) a customary right<sup>12</sup>;
- 104 (5) a public right<sup>13</sup>;
- 105 (6) a local land charge<sup>14</sup>;
- 106 (7) an interest in any coal or coal mine, the rights attached to any such interest  
and the rights of any person under certain provisions<sup>15</sup> of the Coal Industry Act  
1994<sup>16</sup>;
- 107 (8) in the case of land to which title was registered before 1898, rights to mines  
and minerals<sup>17</sup> (and incidental rights) created before 1898<sup>18</sup>;
- 108 (9) in the case of land to which title was registered between 1898 and 1925  
inclusive, rights to mines and minerals (and incidental rights) created before the  
date of registration of the title<sup>19</sup>;
- 109 (10) a franchise<sup>20</sup>, but this will cease to be a specified category at the end of a  
period of ten years from 13 October 2003<sup>21</sup>;
- 110 (11) a manorial right<sup>22</sup>, but this will cease to be a specified category at the end of  
a period of ten years from 13 October 2003<sup>23</sup>;
- 111 (12) a right to rent which was reserved to the Crown on the granting of any  
freehold estate (whether or not the right is still vested in the Crown)<sup>24</sup>, but this will  
cease to be a specified category at the end of a period of ten years from 13  
October 2003<sup>25</sup>;
- 112 (13) a non-statutory right in respect of an embankment or sea or river wall<sup>26</sup>, but  
this will cease to be a specified category at the end of a period of ten years from 13  
October 2003<sup>27</sup>;

- 113 (14) a right to payment in lieu of tithe<sup>28</sup>, but this will cease to be a specified category at the end of a period of ten years from 13 October 2003<sup>29</sup>;
- 114 (15) for a period of three years beginning with 13 October 2003, a right acquired under the Limitation Act 1980 before that date<sup>30</sup>; and
- 115 (16) for a period of ten years beginning with 13 October 2003, a right in respect of the repair of a church chancel<sup>31</sup>;
- 116 (17) a PPP lease<sup>32</sup> relating to transport in London<sup>33</sup>.

1 As to the meaning of 'land' see PARA 826 note 4 ante.

2 The Lord Chancellor may by order substitute for the term specified in head (1) in the text such shorter term as he thinks fit: Land Registration Act 2002 s 118(1)(f); and see PARA 826 note 6 ante. At the date at which this volume states the law, no such order had been made. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 Ibid ss 11(4)(b), 12(4)(c), Sch 1 para 1. Schedule 1 para 1 is to be taken to include an interest which immediately before 13 October 2003 was an overriding interest under the Land Registration Act 1925 s 70(1)(k) (repealed) (ie a lease granted for a term not exceeding 21 years): Land Registration Act 2002 s 134(2), Sch 12 para 12. As to leases under the Land Registration Act 1925 s 70(1)(k) (repealed) see *City Permanent Building Society v Miller* [1952] Ch 840 at 853, [1952] 2 All ER 621 at 628, CA, per Jenkins LJ (an agreement for a lease, if it has no more than contractual effect, is excluded because the word 'granted' imports the actual creation of a term of years); *Barclays Bank plc v Zarovabli* [1997] Ch 321, [1997] 2 All ER 19 (a statutory tenancy is not a lease that has been 'granted for a term not exceeding 21 years').

4 For these purposes, a 'qualifying estate' is an unregistered legal estate which is: (1) a freehold estate in land; or (2) a leasehold estate in land for a term which, at the time of transfer, grant or creation, has more than seven years to run: Land Registration Act 2002 s 4(2).

5 For the meaning of 'term of years absolute' see PARA 827 note 15 ante.

6 Ie a lease falling within the Land Registration Act 2002 s 4(1)(d) (see PARA 827 head (4) ante): Sch 1 para 1. The grant of such a lease is an event which triggers the requirement of first registration: see PARA 827 ante.

7 Ie a lease falling within ibid s 4(1)(e) (see PARA 827 head (5) ante): Sch 1 para 1. The grant of such a lease is an event which triggers the requirement of first registration: see PARA 827 ante. As to the Housing Act 1985 Pt V (ss 118-188) (as amended) (the right to buy) see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1795 et seq.

8 Ie a lease falling within the Land Registration Act 2002 s 4(1)(f) (see PARA 827 head (6) ante): Sch 1 para 1. The grant of such a lease is an event which triggers the requirement of first registration: see PARA 827 ante.

9 As to the meaning of 'actual occupation' see *Williams and Glyn's Bank v Boland* [1981] AC 487 at 505, [1980] 2 All ER 408 at 413, HL, per Lord Wilberforce ('what is required is physical presence, not some entitlement at law'); and see *Webb v Pollmount Ltd* [1966] Ch 584, [1966] 1 All ER 481 (actual occupation involves the physical possession of the land); *Hodgson v Marks* [1971] Ch 892 at 932, [1971] 2 All ER 684 at 688, CA, per Russell LJ (any attempt to lay down the situations in which a person other than a vendor is deemed to be in actual occupation is undesirable); *Lloyds Bank plc v Rosset* [1989] Ch 350 at 377, CA, per Nicholls LJ (what constitutes physical presence depends on the nature and state of the property in question and does not require residence) (revsd by HL [1991] 1 AC 107, [1990] 1 All ER 111 without discussing this point); *Kling v Keston Properties Ltd* (1983) 49 P & CR 212 (actual occupation of a garage); *Chhokar v Chhokar* [1984] FLR 313 (actual occupation does not cease merely because the person in question is temporarily excluded, particularly if that exclusion is wrongful). A wife may be in actual occupation in her own right and her presence is not the mere shadow of her husband's: *Williams and Glyn's Bank v Boland* supra. It has been held, however, that children living with parents who were the legal owners were not in actual occupation and were present only because of their parents' occupation: *Hypo-Mortgage Services Ltd v Robinson* [1997] 2 FCR 422, [1997] 2 FLR 71, CA. The occupation of a licensee paying no rent has been held to be the occupation of the licensee and not of the licensor: *Strand Securities Ltd v Caswell* [1965] Ch 958, [1965] 1 All ER 820, CA.

10 Land Registration Act 2002 Sch 1 para 2. Cf the Land Registration Act 1925 s 70(1)(g) (repealed), which included the rights of a person in receipt of the rents and profits of the land although not in actual occupation of it. The relevant time for ascertaining the rights of occupiers is the time of transfer of title, not the time of the acquisition of an interest in the property: *Habermann v Koehler* [2000] All ER (D) 1739, (2000) Times, 22 November, CA (mortgagee of property acquired freehold free of occupiers' unregistered option to purchase not disclosed at time freehold acquired). As to settlements see PARA 893 et seq post; and SETTLEMENTS. Subject to certain exceptions, no settlement created on or after 1 January 1997 is a settlement for the purposes of the

Settled Land Act 1925: see the Trusts of Land and Appointment of Trustees Act 1996 ss 2, 27; and REAL PROPERTY vol 39(2) (Reissue) PARA 65; SETTLEMENTS vol 42 (Reissue) PARA 676.

If the title to the legal estate by virtue of which a spouse is entitled to occupy a dwelling-house (including any legal estate held by trustees for that spouse) is registered under the Land Registration Act 2002, a spouse's matrimonial home rights are not capable of falling within Sch 1 para 2: see the Family Law Act 1996 s 31(10) (amended by the Land Registration Act 2002 s 133, Sch 11 para 34(1), (2)); and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 286.

None of the matters mentioned in the Land Registration Act 2002 s 87(1) (pending land actions etc: see PARA 1019 post) is capable of falling within Sch 1 para 2: s 87(3). Nor are the rights conferred on a person by or under an access order under the Access to Neighbouring Land Act 1992 (see NUISANCE vol 78 (2010) PARA 218) capable of so falling: see s 5(5) (substituted by the Land Registration Act 2002 Sch 11 para 26(1), (4)).

11 Land Registration Act 2002 Sch 1 para 3. Cf the Land Registration Act 1925 s 70(1)(a) (repealed) and the Land Registration Rules 1925, SR & O 1925/1093, r 258 (revoked), which included certain equitable easements. The Land Registration Act 2002 Sch 1 para 3 reverses the previous position as decided in *Celsteel Ltd v Alton House Holdings Ltd* [1985] 2 All ER 562, [1985] 1 WLR 204 (revsd in part [1986] 1 All ER 608, [1986] 1 WLR 512, CA), whereby an equitable right of way openly exercised and enjoyed as appurtenant to the dominant land was an overriding interest. As to easements and profits à prendre see further EASEMENTS AND PROFITS A PRENDRE.

12 Land Registration Act 2002 Sch 1 para 4. Cf the Land Registration Act 2002 s 70(1)(a) (repealed). For examples of customary rights see *Goodman v Mayor of Saltash* (1882) 7 App Cas 633 (fishing for oysters); *Wyld v Silver* [1963] Ch 243 (holding a fair or wake); *Peggs v Lamb* [1994] Ch 172 (grazing of animals on common land); and see CUSTOM AND USAGE.

13 Land Registration Act 2002 Sch 1 para 5. Cf the Land Registration Act 1925 s 70(1)(a) (repealed). As to public rights see *Overseas Investment Services Ltd v Simcobuild Construction Ltd* (1995) 70 P & CR 322, CA (public rights are rights: (1) exercisable by anyone, whether he owns land or not, merely by virtue of the general law; and (2) presently exercisable, but not rights that might become exercisable in future); and see eg *Secretary of State for the Environment, Transport and the Regions v Baylis (Gloucester) Ltd* (2000) 80 P & CR 324 ('public rights' include a fee simple vested in a highway authority in respect of a dedicated highway).

14 Land Registration Act 2002 Sch 1 para 6. Cf the Land Registration Act 1925 s 70(1)(i) (repealed). As to local land charges see LAND CHARGES. The Land Registration Act 2002 Sch 1 para 6 must be taken to include an interest which immediately before 13 October 2003 (ie the date on which Sch 1 came into force) was an overriding interest under the Land Registration Act 1925 s 70(1)(i) (repealed) and whose status as such was preserved by the Local Land Charges Act 1975 s 19(3) (repealed) (transitional provision in relation to change in definition of 'local land charge': see LAND CHARGES vol 26 (2004 Reissue) PARA 672); Land Registration Act 2002 Sch 12 para 13.

A charge over registered land which is a local land charge may only be realised if the title to the charge is registered: see the Land Registration Act 2002 s 55; and PARA 949 post. Such registration is quite distinct from the general requirements as to registration of local land charges (whether or not they affect registered land) under the Local Land Charges Act 1975: see LAND CHARGES vol 26 (2004 Reissue) PARA 671 et seq.

15 Ie the Coal Industry Act 1994 s 38 (rights to withdraw support: see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 178 et seq), s 49 (rights to work coal in former copyhold land: see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 400 et seq) or s 51 (additional rights in relation to underground land: see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 399); Land Registration Act 2002 Sch 1 para 7.

16 Ibid Sch 1 para 7. Cf the Land Registration Act 1925 s 70(1)(m) (repealed).

17 As to the meaning of 'mines and minerals' see PARA 826 note 4 ante.

18 Land Registration Act 2002 Sch 1 para 8. The effect of the Land Transfer Act 1875 s 18 (repealed), and the Land Transfer Act 1897 s 18, Sch 1 (repealed), is preserved by this provision in relation to mines and minerals in respect of pre-1898 registrations. Cf the Land Registration Act 1925 s 70(1)(l) (repealed).

19 Land Registration Act 2002 Sch 1 para 9. The effect of the Land Transfer Act 1875 s 18 (repealed), and the Land Transfer Act 1897 s 18, Sch 1 (repealed), is preserved by this provision in relation to mines and minerals in respect of pre-1926 registrations. Cf the Land Registration Act 1925 s 70(1)(l) (repealed).

20 Land Registration Act 2002 Sch 1 para 10. Cf the Land Registration Act 1925 s 70(1)(j) (repealed). As to franchises see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 8.42.

21 See the Land Registration Act 2002 s 117(1); and PARA 867 post.

22 Ibid Sch 1 para 11. Cf the Land Registration Act 1925 s 70(1)(j) (repealed). As to the meaning of 'manorial rights' see the Law of Property Act 1922 Sch 12 paras 5, 6 (repealed); and *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 8.41. See also CUSTOM AND EXCISE.

23 See note 21 supra.

24 Land Registration Act 2002 Sch 1 para 12. Cf the Land Registration Act 1925 s 70(1)(b) (repealed). As to Crown rents see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 8.43. See also CROWN PROPERTY.

25 See note 21 supra.

26 Land Registration Act 2002 Sch 1 para 13. Cf the Land Registration Act 1925 s 70(1)(d) (repealed). As to the nature of such non-statutory rights see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 8.45. Cf a statutory liability in respect of an embankment or sea wall which is a liability under the general law.

27 See note 21 supra.

28 Land Registration Act 2002 Sch 1 para 14. Cf the Land Registration Act 1925 s 70(1)(e) (repealed). The only surviving class of such right is the right to payment of 'corn rents', which are no longer collected by the Church Commissioners but may in some cases be payable to, and collected by, other persons: see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 8.46. As to the Church Commissioners see ECCLESIASTICAL LAW.

29 See note 21 supra.

30 Land Registration Act 2002 Sch 1 para 15 (added by Sch 12 para 7). This provision has effect for the period of three years beginning with the day on which Sch 1 came into force (ie 13 October 2003): Sch 12 para 7. Cf the Land Registration Act 1925 s 70(1)(f) (repealed). On first registration, the estate is vested in the proprietor subject, among other matters, to interests acquired under the Limitation Act 1980 of which the proprietor has notice: see the Land Registration Act 2002 ss 11(4)(c), 12(4)(d); and PARA 835 et seq ante. As to adverse possession see PARA 1021 et seq post.

31 Ibid Sch 1 para 16 (added by the Land Registration Act 2002 (Transitional Provisions) (No 2) Order 2003, SI 2003/2431, art 2). See also PARA 863 notes 9-11 ante.

32 For the meaning of 'PPP lease' see PARA 826 note 11 ante.

33 See the Land Registration Act 2002 s 90(5), which provides that Sch 1 has effect as if it included a paragraph referring to a PPP lease. Cf the Land Registration Act 1925 s 70(1)(kk) (repealed).

## UPDATE

### 866 Specified interests overriding first registration

NOTE 10--Family Law Act 1996 s 31(10) further amended so as to apply provisions to civil partners: Civil Partnership Act 2004 Sch 9 para 2(10).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(5) GENERAL EFFECT OF REGISTRATION/(ii) Unregistered Interests which Override First Registration/867. Protection of unregistered interests which will no longer override first registration at the end of the specified ten-year period.

### 867. Protection of unregistered interests which will no longer override first registration at the end of the specified ten-year period.

Certain miscellaneous unregistered interests<sup>1</sup> will no longer override first registration at the end of the period of ten years beginning with 13 October 2003<sup>2</sup>. They may, however, be protected by the lodging of a caution against first registration of title to the relevant estate<sup>3</sup>.

If made before the end of the specified ten-year period, no fee may be charged for an application to lodge a caution against first registration by virtue of such an interest<sup>4</sup>.

1    Ie unregistered interests falling within the Land Registration Act 2002 ss 11(4)(b), 12(4)(c), Sch 1 paras 10-14: see PARA 866 heads (10)-(14) ante.

2    Ibid s 117(1).

3    As to cautions against first registration see PARA 855 et seq ante.

4    Land Registration Act 2002 s 117(2)(a). As to fees see PARA 1071 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(5) GENERAL EFFECT OF REGISTRATION/(ii) Unregistered Interests which Override First Registration/868. Notice of unregistered interests.

### **868. Notice of unregistered interests.**

If it appears to the Chief Land Registrar<sup>1</sup> that a registered estate<sup>2</sup> is subject to an unregistered interest which overrides first registration<sup>3</sup> and is not excluded<sup>4</sup> from having a notice entered in respect of it, he may enter a notice in the register<sup>5</sup> in respect of the interest<sup>6</sup>. The registrar must give notice of an entry under this provision to such persons as rules<sup>7</sup> may provide<sup>8</sup>. Such notice of an entry must be given to the registered proprietor<sup>9</sup>, unless he has applied for entry of the notice or otherwise consents to an application to enter the notice<sup>10</sup>. The registrar must also give notice of the entry to any person who appears to him to be entitled to the interest protected by the notice or whom the registrar otherwise considers appropriate<sup>11</sup>, but he is not obliged to do so if either that person applies for the entry of the notice or consented to the entry of the notice<sup>12</sup>, or if that person's name and address for service<sup>13</sup> are not set out in the individual register<sup>14</sup> in which the notice is entered<sup>15</sup>.

1    As to the Chief Land Registrar see PARA 1066 post.

2    For the meaning of 'registered estate' see PARA 861 note 3 ante.

3    Ie an unregistered interest which falls within any of the paragraphs of the Land Registration Act 2002 ss 11(4)(b), 12(4)(c), Sch 1 (see PARA 866 ante): s 37(1)(a).

4    Ie by virtue of ibid s 33: see PARA 996 post.

5    As to the register of title see PARA 811 et seq post.

6    Land Registration Act 2002 s 37(1).

7    As to land registration rules generally see PARA 1125 post.

8    Land Registration Act 2002 s 37(2).

9    Land Registration Rules 2003, SI 2003/1417, r 89(1)(a).

10   Ibid r 89(2).

11   Ibid r 89(1)(b).

12   Ibid r 89(3)(a).

13   Ie under ibid r 198: see PARA 1130 post.

14   For the meaning of 'individual register' see PARA 812 note 3 ante.

15 Land Registration Rules 2003, SI 2003/1417, r 89(3)(b).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(5) GENERAL EFFECT OF REGISTRATION/(iii) Description of Boundaries/869. Boundaries of registered land.

### **(iii) Description of Boundaries**

#### **869. Boundaries of registered land.**

The boundary of a registered estate<sup>1</sup> as shown for the purposes of the register<sup>2</sup> is a general boundary, unless shown as determined under the relevant statutory provision<sup>3</sup>. A general boundary does not determine the exact line of the boundary<sup>4</sup>.

1 For the meaning of 'registered estate' see PARA 861 note 3 post.

2 As to the register of title see PARA 811 et seq ante.

3 Land Registration Act 2002 s 60(1). The relevant statutory provision is s 60: see s 60(3), (4); and PARA 871 post.

4 Ibid s 60(2). As to the application of the general boundaries rule (ie under the previous legislation) to a non-tidal stream see *Hesketh v Willis Cruisers Ltd* (1968) 19 P & CR 573, CA; and BOUNDARIES vol 4(1) (2002 Reissue) PARA 906.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(5) GENERAL EFFECT OF REGISTRATION/(iii) Description of Boundaries/870. Accretion and diluvion.

#### **870. Accretion and diluvion.**

The fact that a registered estate<sup>1</sup> in land<sup>2</sup> is shown in the register<sup>3</sup> as having a particular boundary does not affect the operation of accretion or diluvion<sup>4</sup>. An agreement about the operation of accretion or diluvion in relation to a registered estate in land has effect only if registered in accordance with the relevant rules<sup>5</sup>.

An application to register an agreement about the operation of accretion or diluvion in relation to a registered estate in land must be made by, or be accompanied by the consent of, the proprietor of the registered estate and of any registered charge<sup>6</sup>, except that no such consent is required from a person who is party to the agreement<sup>7</sup>. On registration of such an agreement the Chief Land Registrar<sup>8</sup> must make a note in the property register<sup>9</sup> that the agreement is registered for the purposes of the statutory requirements<sup>10</sup>.

1 For the meaning of 'registered estate' see PARA 861 note 3 post.

2 As to the meaning of 'land' see PARA 826 note 4 post.

3 As to the register of title see PARA 811 et seq ante.

4 Land Registration Act 2002 s 61(1). This enacts the former common law rule. As to accretion and diluvion see BOUNDARIES vol 4(1) (2002 Reissue) PARA 926; WATER AND WATERWAYS vol 101 (2009) PARA 38-39.

- 5 Ibid s 61(2).
- 6 For the meaning of 'registered charge' see PARA 861 note 8 ante.
- 7 Land Registration Rules 2003, SI 2003/1417, r 123(1).
- 8 As to the Chief Land Registrar see PARA 1066 post.
- 9 For the meaning of 'property register' see PARA 814 note 1 ante.
- 10 Land Registration Rules 2003, SI 2003/1417, r 123(2). The statutory requirements referred to in the text are those of the Land Registration Act 2002 s 61(2) (see the text and note 5 supra).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(5) GENERAL EFFECT OF REGISTRATION/(iii) Description of Boundaries/871. Power to make rules for determination of exact line of boundary.

### **871. Power to make rules for determination of exact line of boundary.**

Rules<sup>1</sup> may make provision enabling or requiring the exact line of the boundary of a registered estate<sup>2</sup> to be determined and may, in particular, make provision about:

- 117 (1) the circumstances in which the exact line of a boundary may or must be determined<sup>3</sup>;
- 118 (2) how the exact line of a boundary may be determined<sup>4</sup>;
- 119 (3) procedure in relation to applications for determination<sup>5</sup>, and
- 120 (4) the recording of the fact of determination in the register<sup>6</sup> or the index<sup>7</sup>.

Such rules must provide for applications for determination to be made to the Chief Land Registrar<sup>8</sup>.

- 1 As to land registration rules generally see PARA 1125 post. As to the rules made see PARA 872 et seq post.
- 2 For the meaning of 'registered estate' see PARA 861 note 3 post.
- 3 Land Registration Act 2002 s 60(3)(a).
- 4 Ibid s 60(3)(b).
- 5 Ibid s 60(3)(c).
- 6 As to the register of title see PARA 811 et seq ante.
- 7 Land Registration Act 2002 s 60(3)(d). The index referred to in the text is the index kept under s 68: see PARA 817 et seq ante.
- 8 Ibid s 60(4). As to the Chief Land Registrar see PARA 1066 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(5) GENERAL EFFECT OF REGISTRATION/(iii) Description of Boundaries/872. Application for the determination of the exact line of a boundary.

### **872. Application for the determination of the exact line of a boundary.**



A proprietor of a registered estate<sup>1</sup> may apply to the Chief Land Registrar<sup>2</sup> for the exact line of the boundary<sup>3</sup>, or any part of the boundary, of that registered estate to be determined<sup>4</sup>. The application must be made in the prescribed form<sup>5</sup> and be accompanied by: (1) a plan, or a plan and a verbal description, identifying the exact line of the boundary and showing sufficient surrounding physical features to allow the general position of the boundary to be drawn on the Ordnance Survey map; and (2) such evidence as the applicant seeks to rely on to establish the exact line of the boundary<sup>6</sup>.

When a boundary has been determined following an application<sup>7</sup>, the registrar must make an entry in the individual register<sup>8</sup> of the applicant's registered title and, if appropriate, in the individual register of any superior or inferior registered title, and any registered title<sup>9</sup> affecting the other land<sup>10</sup> adjoining the determined boundary, stating that the exact line of the boundary is determined under the relevant statutory provision<sup>11</sup>. The registrar must also add to the title plan of the applicant's registered title and, if appropriate, to the title plan of any superior or inferior registered title, and any registered title affecting the other land adjoining the determined boundary, such particulars of the exact line of the boundary as he considers appropriate<sup>12</sup>. However, instead of, or as well as, adding particulars of the exact line of the boundary to the title plans<sup>13</sup>, the registrar may make an entry in the individual registers<sup>14</sup> referring to any other plan showing the exact line of the boundary<sup>15</sup>.

Where the exact line of part of the boundary of a registered estate has been determined, the ends of that part of the boundary are not to be treated as determined for the purposes of adjoining parts of the boundary the exact line of which has not been determined<sup>16</sup>.

1 For the meaning of 'registered estate' see PARA 861 note 3 post.

2 As to the Chief Land Registrar see PARA 1066 post.

3 In the Land Registration Rules 2003, SI 2003/1417, Pt 10 (rr 117-123) (except in r 121: see the text and note 16 infra), 'boundary' includes part only of a boundary: r 117.

4 Ibid r 118(1).

5 As to the prescribed form see the Land Registration Rules 2003, SI 2003/1417, r 118(2), Sch 1 Form DB. As to the use of forms generally see PARA 1087 et seq post.

6 Ibid r 118(2). As to the Ordnance Survey see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1110 et seq.

7 Ie under ibid r 118.

8 For the meaning of 'individual register' see PARA 812 note 3 ante.

9 As to the meaning of 'registered title' see PARA 834 post.

10 As to the meaning of 'land' see PARA 826 note 4 post.

11 Land Registration Rules 2003, SI 2003/1417, r 120(1)(a). The relevant statutory provision is the Land Registration Act 2002 s 60 (see PARAS 869, 871 ante).

12 Land Registration Rules 2003, SI 2003/1417, r 120(1)(b).

13 Ie the title plans mentioned in ibid r 120(1)(b).

14 Ie the individual registers mentioned in ibid r 120(1)(a).

15 Ibid r 120(2).

16 Ibid r 121.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(5) GENERAL EFFECT OF REGISTRATION/(iii) Description of Boundaries/873. Procedure on application for determination of the exact line of a boundary.

### **873. Procedure on application for determination of the exact line of a boundary.**

Where the Chief Land Registrar<sup>1</sup> is satisfied that:

- 121 (1) the plan, or plan and verbal description, supplied<sup>2</sup> is sufficient to identify the exact line of the boundary;
- 122 (2) the applicant has shown an arguable case that the exact line of the boundary is in the position shown on the plan, or plan and verbal description, supplied; and
- 123 (3) he can identify all the owners of the land<sup>3</sup> adjoining the boundary to be determined and has an address at which each owner may be given notice<sup>4</sup>,

he must give the owners of the land adjoining the boundary to be determined (except the applicant) notice of the application<sup>5</sup> to determine the exact line of the boundary and of the effect of any failure to object<sup>6</sup> to the application<sup>7</sup>. Unless any recipient objects to the application to determine the exact line of the boundary within the time fixed by the notice<sup>8</sup>, as extended<sup>9</sup>, if applicable, the registrar must complete the application<sup>10</sup>. Where, however, the registrar is not satisfied as to the matters set out in heads (1) to (3) above, he must cancel the application<sup>11</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 In accordance with the Land Registration Rules 2003, SI 2003/1417, r 118(2)(a): see PARA 872 ante.

3 For these purposes, 'the owner of the land' means: (1) a person entitled to apply to be registered as the proprietor of an unregistered legal estate in land under the Land Registration Act 2002 s 3 (see PARA 826 post); (2) the proprietor of any registered estate or charge affecting the land; and (3) if the land is demesne land, Her Majesty: Land Registration Rules 2003, SI 2003/1417, r 119(8). For the meanings of 'registered estate' and 'registered charge' see PARA 861 ante; for the meaning of 'demesne land' see PARA 883 note 2 post; and as to representation in relation to Crown and Duchy land see PARAS 883-888 post. As to the meaning of 'land' see PARA 826 note 4 ante.

4 As to address for service see PARA 1130 post.

5 Where the evidence supplied in accordance with the Land Registration Rules 2003, SI 2003/1417, r 118(2) (b) (see PARA 872 ante) includes an agreement in writing as to the exact line of the boundary with an owner of the land adjoining the property, the registrar need not give notice of the application to that proprietor: r 119(2).

6 See *ibid* r 119(6); and the text and note 10 *infra*.

7 *Ibid* r 119(1).

8 The time fixed by the notice to the owner of the land to object to the application must be the period ending at 12 noon on the twentieth business day after the date of issue of the notice or such longer period as the registrar may decide before the issue of the notice (*ibid* r 119(3)); but the period so set may be extended for a particular recipient of the notice by the registrar following a request by that recipient, received by the registrar before that period has expired, setting out why an extension should be allowed (r 119(4)). If such a request is received the registrar may, if he considers it appropriate, seek the views of the applicant and if after considering any such views and all other relevant matters he is satisfied that a longer period should be allowed he may allow such period as he considers appropriate, whether or not the period is the same as any period specified by the recipient of the notice: r 119(5). For the meaning of 'business day' see PARA 847 note 9 ante. As to the substituted period where there has been a notice under r 216(2) see PARA 1065 post.

9 In *ibid* r 119(5): see note 8 *supra*.

10 *Ibid* r 119(6).

11 *Ibid* r 119(7).

## UPDATE

### **873 Procedure on application for determination of the exact line of a boundary**

TEXT AND NOTES 1-7--SI 2003/1417 r 119(1), (8) amended, r 119(2) substituted: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(5) GENERAL EFFECT OF REGISTRATION/(iii) Description of Boundaries/874. Determination of the exact line of a boundary without application.

### **874. Determination of the exact line of a boundary without application.**

Where there is either a transfer of part of a registered estate<sup>1</sup> in land<sup>2</sup> or the grant of an estate in land for a term of years absolute<sup>3</sup> which is a registrable disposition<sup>4</sup> of part of a registered estate in land (a 'disposition') and there is (1) a common boundary<sup>5</sup>; and (2) sufficient information, in the Chief Land Registrar's<sup>6</sup> opinion, to enable him to determine the exact line of the common boundary, the register may determine the exact line of the common boundary<sup>7</sup>. If he does, he must add to the title plan<sup>8</sup> of the disponor's affected registered title<sup>9</sup> (whether or not the disponor is still the proprietor of that title, or still entitled to be registered as proprietor of that title) and to the title plan of the registered title under which the disposition is being registered such particulars of the exact line of the common boundary as he considers appropriate<sup>10</sup>. Instead of, or as well as, adding particulars of the exact line of the common boundary to the title plans, the registrar may, however, make an entry in the individual registers<sup>11</sup> of the affected registered titles referring to the description of the common boundary in the disposition<sup>12</sup>.

The registrar must also make an entry in the individual registers of the affected registered titles of the fact of determination of the boundary<sup>13</sup>.

1 For the meaning of 'registered estate' see PARA 861 note 3 ante.

2 As to the meaning of 'land' see PARA 826 note 4 post.

3 As to the meaning of 'term of years absolute' see PARA 827 note 15 post.

4 For the meaning of 'registrable disposition' see PARA 911 post.

5 For these purposes, 'common boundary' means any boundary of the land disposed of by a disposition which adjoins land in which the disponor at the date of the disposition had a registered estate in land or of which such disponor was entitled to be registered as proprietor: Land Registration Rules 2003, SI 2003/1417, r 122(4).

6 As to the Chief Land Registrar see PARA 1066 post.

7 Land Registration Rules 2003, SI 2003/1417, r 122(1), (2).

8 As to the meaning of 'title plan' see PARA 814 ante.

9 As to the meaning of 'registered title' see PARA 834 ante.

10 Land Registration Rules 2003, SI 2003/1417, r 122(2)(b).

11 For the meaning of 'individual register' see PARA 812 note 3 ante.

12 Land Registration Rules 2003, SI 2003/1417, r 122(3).

13 Ibid r 122(2)(a).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(6) QUALITY OF TITLE/(i) Upgrading Title/875. Persons who may apply for upgrading of title.

## **(6) QUALITY OF TITLE**

### **(i) Upgrading Title**

#### **875. Persons who may apply for upgrading of title.**

The only persons who may apply to the Chief Land Registrar<sup>1</sup> for the exercise of any of his statutory powers to upgrade a title<sup>2</sup> are:

- 124 (1) the proprietor of the estate to which the application relates<sup>3</sup>;
- 125 (2) a person entitled to be registered<sup>4</sup> as the proprietor of that estate<sup>5</sup>;
- 126 (3) the proprietor of a registered charge<sup>6</sup> affecting that estate<sup>7</sup>; and
- 127 (4) a person interested in a registered estate<sup>8</sup> which derives from that estate<sup>9</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 The powers under the Land Registration Act 2002 s 62(1)-(5): see PARAS 877-879 post.

3 Ibid s 62(7)(a).

4 For the meaning of 'registered' see PARA 826 note 2 ante.

5 Land Registration Act 2002 s 62(7)(b).

6 For the meaning of 'registered charge' see PARA 861 note 8 ante.

7 Land Registration Act 2002 s 62(7)(c).

8 For the meaning of 'registered estate' see PARA 861 note 3 ante.

9 Land Registration Act 2002 s 62(7)(d). Cf the position under the Land Registration Act 1925 (repealed) where only the proprietor was entitled to make the application: see s 77 (repealed), and the Land Registration Rules 1925, SR & O 1925/1093, r 48 (revoked).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(6) QUALITY OF TITLE/(i) Upgrading Title/876. Procedure on application.

#### **876. Procedure on application.**

An application for the Chief Land Registrar<sup>1</sup> to upgrade title<sup>2</sup> must be made in the prescribed form<sup>3</sup> and must, except where made as an application to upgrade good leasehold title to absolute leasehold title<sup>4</sup> or to upgrade a possessory title<sup>5</sup>, be accompanied by such documents as will satisfy the registrar as to the title<sup>6</sup>.

An application by a person entitled to be registered as the proprietor of the estate to which the application relates<sup>7</sup> must be accompanied by evidence of that entitlement<sup>8</sup> and an application by a person interested in a registered estate<sup>9</sup> which derives from the estate to which the application relates<sup>10</sup> must be accompanied by details of the interest and, where the interest is not apparent from the register<sup>11</sup>, evidence to satisfy the registrar of the applicant's interest<sup>12</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 Ie under the Land Registration Act 2002 s 62: see PARAS 875 ante, 877 et seq post.

3 Land Registration Rules 2003, SI 2003/1417, r 124(1). As to the prescribed form see r 124(1), Sch 1 Form UT1. As to the use of forms generally see PARA 1087 et seq post.

4 Ie an application under the Land Registration Act 2002 s 62(2): see PARA 878 post.

5 Ie an application under ibid s 62(4) or (5): see PARAS 877-878 post.

6 Land Registration Rules 2003, SI 2003/1417, r 124(2). As to the documents to accompany an application under the Land Registration Act 2002 s 62(2) see the Land Registration Rules 2003, SI 2003/1417, r 124(3); and PARA 878 post. As to the additional documents to accompany an application under the Land Registration Act 2002 s 62(3)(b) see the Land Registration Rules 2003, SI 2003/1417, r 124(4); and PARA 878 post.

7 As to the entitlement of such a person to apply for upgrading of the title see PARA 875 ante at head (2) in the text.

8 Land Registration Rules 2003, SI 2003/1417, r 124(5).

9 For the meaning of 'registered estate' see PARA 861 note 3 ante.

10 As to the entitlement of such a person to apply for upgrading of the title see PARA 875 head (4) ante.

11 As to the register of title see PARA 811 et seq post.

12 Land Registration Rules 2003, SI 2003/1417, r 124(6).

## UPDATE

### 876 Procedure on application

NOTE 3--SI 2003/1417 Sch 1 Form UT1 substituted by SI 2008/1919; and amended by SI 2009/1996.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(6) QUALITY OF TITLE/(i) Upgrading Title/877. Powers to upgrade freehold title.

### 877. Powers to upgrade freehold title.

Where the title to a freehold estate is entered in the register<sup>1</sup> as possessory<sup>2</sup> or qualified<sup>3</sup>, the Chief Land Registrar<sup>4</sup> may enter it as absolute<sup>5</sup> if he is satisfied<sup>6</sup> as to the title to the estate<sup>7</sup>.

Where the title to a freehold estate in land has been entered in the register as possessory for at least 12 years<sup>8</sup>, the registrar may enter it as absolute if he is satisfied that the proprietor is in possession<sup>9</sup> of the land<sup>10</sup>.

These powers are subject to the provision<sup>11</sup> made in relation to adverse claims<sup>12</sup>.

- 1 As to the register of title see PARA 811 et seq post.
- 2 As to registration with possessory freehold title see PARA 837 ante.
- 3 As to registration with qualified freehold title see PARA 836 ante.
- 4 As to the Chief Land Registrar see PARA 1066 post.
- 5 As to registration with absolute freehold title see PARA 835 ante.
- 6 In determining for these purposes whether he is satisfied as to any title, the registrar is to apply the same standards as those which apply under the Land Registration Act 2002 s 9 (see PARAS 834-837 ante) to first registration of title: s 62(8).
- 7 Ibid s 62(1). The powers under s 62 may be exercised by the registrar of his own initiative or on application made by the persons referred to in s 62(7) (see PARA 875 ante): see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 9.23 note 68.
- 8 The Lord Chancellor may by order amend the provision set out in the text by substituting for the number of years for the time being specified such number of years as the order may provide: Land Registration Act 2002 s 62(9). At the date at which this volume states the law, no such order had been made. As to subordinate legislation generally see PARA 1124 post. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.
- 9 For the purposes of the Land Registration Act 2002, land is in the possession of the proprietor of a registered estate in land if it is physically in his possession, or in that of a person who is entitled to be registered as the proprietor of the registered estate: s 131(1). In the case of the following relationships, land which is (or is treated as being) in the possession of the second-mentioned person is to be treated for the purposes of s 131(1) as in the possession of the first-mentioned person: (1) landlord and tenant; (2) mortgagor and mortgagee; (3) licensor and licensee; (4) trustee and beneficiary: s 131(2). For the purposes of s 131(1), the reference to entitlement does not include entitlement under s 97, Sch 6 (registration of adverse possessor: see PARA 1025 post): s 131(3). Head (2) supra reverses the decision in *Hayes v Newajiaku* [1994] EGCS 106. Entitlement under the Land Registration Act 2002 s 134(2), Sch 12 para 18 (transitional provisions with regard to adverse possession: see PARA 1024 post) is to be disregarded for the purposes of s 131(1): Sch 12 para 18(4).
- 10 Ibid s 62(4).
- 11 Ie to ibid s 62(6): see PARA 879 post.
- 12 See PARA 879 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(6) QUALITY OF TITLE/(i) Upgrading Title/878. Powers to upgrade leasehold title.

### **878. Powers to upgrade leasehold title.**

Where the title to a leasehold estate is entered in the register<sup>1</sup> as good leasehold<sup>2</sup>, the Chief Land Registrar<sup>3</sup> may enter it as absolute<sup>4</sup> if he is satisfied<sup>5</sup> as to the superior title<sup>6</sup>.

Where the title to a leasehold estate is entered in the register as possessory<sup>7</sup> or qualified<sup>8</sup> the registrar may: (1) enter it as good leasehold if he is satisfied as to the title to the estate<sup>9</sup>; and (2) enter it as absolute if he is satisfied both as to the title to the estate and as to the superior title<sup>10</sup>.

Where the title to a leasehold estate in land has been entered in the register as possessory for at least 12 years<sup>11</sup>, the registrar may enter it as good leasehold if he is satisfied that the proprietor is in possession<sup>12</sup> of the land<sup>13</sup>.

These powers are subject to the provision<sup>14</sup> made in relation to adverse claims<sup>15</sup>.

- 1 As to the register of title see PARA 811 et seq post.
- 2 As to registration with good leasehold title see PARA 839 ante.
- 3 As to the Chief Land Registrar see PARA 1066 post.
- 4 As to registration with absolute leasehold title see PARA 838 ante.
- 5 In determining for these purposes whether he is satisfied as to any title, the registrar is to apply the same standards as those which apply under the Land Registration Act 2002 s 10 to first registration of title: s 62(8).
- 6 Ibid s 62(2). An application under s 62(2) must be accompanied by (1) such documents as will satisfy the registrar as to any superior title which is not registered (Land Registration Rules 2003, SI 2003/1417, r 124(3)(a)); (2) where any superior title is registered with possessory or good leasehold title, such evidence as will satisfy the registrar that that title qualified for upgrading to absolute title (r 124(3)(b)); and (3) evidence of any consent to the grant of the lease required from any chargee of any superior title and any superior title (r 124(3)(c)). The powers under the Land Registration Act 2002 s 62 may be exercised by the registrar of his own initiative or on application made by the persons referred to in s 62(7) (see PARA 875 ante); see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 9.23 note 68.
- 7 As to registration with possessory leasehold title see PARA 841 ante.
- 8 As to registration with qualified leasehold title see PARA 840 ante.
- 9 Land Registration Act 2002 s 62(3)(a).
- 10 Ibid s 62(3)(b). An application under s 62(3)(b) must, in addition to the documents referred to in the Land Registration Rules 2003, SI 2003/1417, r 124(2) (see PARA 876 ante), be accompanied by all the documents listed in r 124(3)(a)-(c) (see note 6 supra): r 124(4).
- 11 The Lord Chancellor may by order amend the provision set out in the text by substituting for the number of years for the time being specified such number of years as the order may provide: Land Registration Act 2002 s 62(9). At the date at which this volume states the law, no such order had been made. As to subordinate legislation generally see PARA 1124 post. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.
- 12 For the meaning of 'proprietor in possession' see PARA 877 note 9 ante.
- 13 Land Registration Act 2002 s 62(5). As to the meaning of 'land' see PARA 826 note 4 ante.
- 14 Ie to ibid s 62(6): see PARA 879 post.
- 15 See PARA 879 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(6) QUALITY OF TITLE/(i) Upgrading Title/879. Adverse claims.

### **879. Adverse claims.**

None of the powers to upgrade title<sup>1</sup> is exercisable if there is outstanding any claim adverse to the title of the registered<sup>2</sup> proprietor which is made by virtue of an estate, right or interest whose enforceability is preserved by virtue of the existing entry about the class of title<sup>3</sup>.

- 1 Ie none of the powers under the Land Registration Act 2002 s 62(1)-(5): see PARAS 877-878 ante.
- 2 For the meaning of 'registered' see PARA 826 note 2 ante.
- 3 Land Registration Act 2002 s 62(6).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(6) QUALITY OF TITLE/(i) Upgrading Title/880. Effect of upgrading title.

### **880. Effect of upgrading title.**

On the title to a registered<sup>1</sup> freehold or leasehold estate<sup>2</sup> being entered as absolute<sup>3</sup> under the Chief Land Registrar's powers to upgrade title<sup>4</sup>, the proprietor ceases to hold the estate subject to any estate, right or interest whose enforceability was preserved by virtue of the previous entry about the class of title<sup>5</sup>.

The provision described above also applies on the title to a registered leasehold estate being entered under those powers as good leasehold<sup>6</sup>, except that the entry does not affect or prejudice the enforcement of any estate, right or interest affecting, or in derogation of, the title of the lessor to grant the lease<sup>7</sup>.

1 As to the register of title see PARA 811 et seq post.

2 For the meaning of 'registered estate' see PARA 861 note 3 ante.

3 As to registration with absolute freehold or leasehold title see PARAS 835, 838 ante.

4 Ie under the Land Registration Act 2002 s 62: see PARAS 875-879 ante. As to the Chief Land Registrar see PARA 1066 post.

5 Ibid s 63(1). There was no equivalent provision in the Land Registration Act 1925.

6 As to registration with good leasehold title see PARA 839 ante.

7 Land Registration Act 2002 s 63(2).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(6) QUALITY OF TITLE/(ii) Recording Defects in Title/881. Use of register to record defects in title.

## **(ii) Recording Defects in Title**

### **881. Use of register to record defects in title.**

If it appears to the Chief Land Registrar<sup>1</sup> that a right to determine<sup>2</sup> a registered estate<sup>3</sup> in land<sup>4</sup> is exercisable, he may enter the fact in the register<sup>5</sup>. Rules<sup>6</sup> may make provision about such entries and may, in particular, make provision about:

- 128 (1) the circumstances in which there is a duty to exercise the power so conferred<sup>7</sup>;
- 129 (2) how such entries are to be made<sup>8</sup>; and
- 130 (3) the removal of such entries<sup>9</sup>.

The entry that a right to determine a registered estate in land is exercisable must be made in the property register<sup>10</sup>. An application for such an entry must be supported by evidence sufficient to satisfy the registrar that the applicant has the right to determine the registered estate and that the right is exercisable<sup>11</sup>.



The registrar must make the entry on receipt of the application<sup>12</sup> but before making such an entry he must give notice of the application to the proprietor of the registered estate to which the application relates and the proprietor of any registered charge<sup>13</sup> on that estate<sup>14</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 le to end: see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARAS 9.31-9.33.

3 For the meaning of 'registered estate' see PARA 861 note 3 ante.

4 As to the meaning of 'land' see PARA 826 note 4 ante.

5 Land Registration Act 2002 s 64(1). There was no equivalent provision in the Land Registration Act 1925. As to the register of title see PARA 811 et seq post.

6 As to land registration rules generally see PARA 1125 post.

7 Land Registration Act 2002 s 64(2)(a); and see the text and notes 12-14 infra.

8 Ibid s 64(2)(b); and see the text and note 10 infra.

9 Ibid s 64(2)(c); and see PARA 882 post.

10 Land Registration Rules 2003, SI 2003/1417, r 125(1). For the meaning of 'property register' see PARA 814 note 1 ante.

11 Ibid r 125(2). Any person may object to the application, but must act reasonably in doing so: see the Land Registration Act 2002 ss 73, 77(1)(c); and PARAS 858, 865 ante, 961, 1004, 1081 post.

12 le an application which relates to a right to determine the registered estate on non-payment of a rentcharge: Land Registration Rules 2003, SI 2003/1417, r 125(3).

13 For the meaning of 'registered charge' see PARA 861 note 8 ante.

14 Land Registration Rules 2003, SI 2003/1417, r 125(4).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(6) QUALITY OF TITLE/(ii) Recording Defects in Title/882.  
Removal of entry relating to defect in title.

## **882. Removal of entry relating to defect in title.**

A person may apply to the Chief Land Registrar<sup>1</sup> for removal of the entry that a right to determine a registered estate is exercisable<sup>2</sup> if he is:

- 131 (1) the person entitled to determine the registered estate<sup>3</sup>;
- 132 (2) the proprietor of the registered estate to which the entry relates<sup>4</sup>;
- 133 (3) a person entitled to be registered as proprietor of that estate<sup>5</sup>; or
- 134 (4) any other person whom the registrar is satisfied has a sufficient interest in the removal of the entry<sup>6</sup>.

An application for removal of the entry must be supported by evidence sufficient to satisfy the registrar that the right to determine the registered estate is not exercisable<sup>7</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 le the entry under the Land Registration Act 2002 s 64: see PARA 881 ante.

3 Land Registration Rules 2003, SI 2003/1417, r 125(5)(a). For the meaning of 'registered estate' see PARA 861 note 3 ante.

4 Ibid r 125(5)(b).

5 Ibid r 125(5)(c).

6 Ibid r 125(5)(d).

7 Ibid r 125(6). Any person may object to the application, but must act reasonably in doing so: see the Land Registration Act 2002 ss 73, 77(1)(c); and PARAS 858, 865 ante, 961, 1004, 1081 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(i) Crown and Duchy Land/883.  
Voluntary registration of demesne land.

## **(7) SPECIAL CASES**

### **(i) Crown and Duchy Land**

#### **883. Voluntary registration of demesne land.**

Her Majesty<sup>1</sup> may grant an estate in fee simple absolute in possession out of demesne land<sup>2</sup> to Herself<sup>3</sup>. The grant of an estate under this power is to be regarded as not having been made unless an application for first registration<sup>4</sup> is made in respect of the estate before the end of the period for registration<sup>5</sup>; and the period for registration is two months beginning with the date of the grant, or such longer period as the Chief Land Registrar<sup>6</sup> may provide<sup>7</sup>.

There was no equivalent provision under the Land Registration Act 1925 whereby the Crown could register the title to demesne land<sup>8</sup>. It is anticipated that the new power will be of particular significance in relation to registration of title to the foreshore<sup>9</sup>.

1 As to representation with regard to Crown land see PARA 886 post.

2 'Demesne land' means land belonging to Her Majesty in right of the Crown which is not held for an estate in fee simple absolute in possession: Land Registration Act 2002 s 132(1). In this definition, the reference to land belonging to Her Majesty does not, however, include land in relation to which a freehold estate in land has determined, but in relation to which there has been no act of entry or management by the Crown: s 132(2). The Crown's demesne lands include: (1) the foreshore around England and Wales except where it has been granted away or is in some other way vested in a private owner; (2) land which has escheated to the Crown; and (3) the ancient lands of the Crown which it has never granted away in fee: see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 11.7; and see further CROWN PROPERTY. As to the application of the Land Registration Act 2002 to internal waters adjacent to England or Wales see s 130; and PARA 826 ante. For the meanings of 'England' and 'Wales' see PARA 803 note 2 ante. As to escheat see PARA 887 post.

3 Ibid s 79(1).

4 le an application under ibid s 3: see PARA 826 ante.

5 Ibid s 79(2).

6 As to the Chief Land Registrar see PARA 1066 post.

7 Land Registration Act 2002 s 79(3). If on the application of Her Majesty the registrar is satisfied that there is a good reason for doing so, he may by order provide that the period for registration ends on such later date

as he may specify in the order: s 79(4). If an order under s 79(4) is made in a case where s 79(2) has already applied, that application of s 79(2) is to be treated as not having occurred: s 79(5).

8 This was described as a major lacuna in the system of land registration under the Land Registration Act 1925: see *Scmlla Properties Ltd v Gesso Properties (BVI) Ltd* [1995] BCC 793 at 798 per Stanley Burnton QC.

9 See *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 11.10. As to adverse possession of the foreshore see PARA 1034 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(i) Crown and Duchy Land/884.  
Compulsory registration of grants out of demesne land.

#### **884. Compulsory registration of grants out of demesne land.**

The following events are events which trigger the requirement of first registration<sup>1</sup>:

- 135 (1) the grant by Her Majesty<sup>2</sup> out of demesne land<sup>3</sup> of an estate in fee simple absolute in possession, otherwise than to Herself<sup>4</sup>;
- 136 (2) the grant by Her Majesty out of demesne land of an estate in land:
- 9
- 18. (a) for a term of years absolute<sup>5</sup> of more than seven years<sup>6</sup> from the date of the grant<sup>7</sup>; and
- 19. (b) for valuable or other consideration<sup>8</sup>, by way of gift<sup>9</sup> or in pursuance of an order of any court<sup>10</sup>.
- 10

This does not, however, apply to the grant of an estate in mines and minerals<sup>11</sup> held apart from the surface<sup>12</sup>.

The Lord Chancellor may by order amend these provisions so as to add to the events in heads (1) and (2) above such events relating to demesne land as he may specify in the order<sup>13</sup> and may make such consequential amendments of any provision of, or having effect under, any Act as he thinks appropriate<sup>14</sup>.

If the requirement of registration is not complied with, the transfer, grant or creation becomes void as regards the transfer, grant or creation of a legal estate<sup>15</sup> and the grant has effect as a contract made for valuable consideration to grant the legal estate concerned<sup>16</sup>.

1 Ie the Land Registration Act 2002 s 4(1) applies as if the events listed in the text were included among the events listed in that provision (see PARA 827 ante): s 80(1).

2 As to representation with regard to Crown land see PARA 886 post.

3 For the meaning of 'demesne land' see PARA 883 note 2 ante.

4 Ibid s 80(1)(a). As to the power of Her Majesty to grant an estate to Herself see s 79; and PARA 883 ante.

5 For the meaning of 'term of years absolute' see PARA 827 note 15 ante.

6 The Lord Chancellor may by order substitute for the term specified in head (2)(a) in the text such shorter term as he thinks fit: Land Registration Act 2002 s 118(1)(e); and see PARA 826 note 6 ante. At the date at which this volume states the law, no such order had been made. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

7 Ibid s 80(1)(b)(i).

8 As to the meaning of 'valuable consideration' see PARA 827 note 7 ante.

9 The reference in the Land Registration Act 2002 s 80(1)(b)(ii) (see head (2)(b) in the text) to grant by way of gift includes grant for the purpose of constituting a trust under which Her Majesty does not retain the whole of the beneficial interest: s 80(2).

10 Ibid s 80(1)(b)(ii).

11 As to the meaning of 'mines and minerals' see PARA 826 note 4 ante.

12 Land Registration Act 2002 s 80(3).

13 Ibid s 80(4)(a). At the date at which this volume states the law, no such order had been made.

14 Ibid s 80(4)(b).

15 Ibid s 7(1) (applied by virtue of s 80(1)).

16 Ibid s 7(2) (applied and modified by virtue of s 80(1), (5)). As to compulsory registration generally see PARA 827 et seq ante.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(i) Crown and Duchy Land/885.  
Demesne land; cautions against first registration.

### **885. Demesne land; cautions against first registration.**

The provisions allowing a person to lodge a caution against first registration<sup>1</sup> apply as if demesne land<sup>2</sup> were held by Her Majesty<sup>3</sup> for an unregistered estate in fee simple absolute in possession<sup>4</sup>. In relation to cautions lodged by virtue of this provision, the provisions of the Land Registration Act 2002 relating to cautions against first registration<sup>5</sup> have effect subject to such modifications as rules<sup>6</sup> may provide<sup>7</sup>.

At the end of the period of ten years from 13 October 2003<sup>8</sup>, or such longer period as rules may provide<sup>9</sup>, this right to lodge a caution will become subject to the limitation<sup>10</sup> that no caution may thereafter be lodged by virtue of ownership of a freehold estate in land<sup>11</sup>. Any such caution which is in force immediately before the end of the period mentioned above will cease to have effect at the end of that period, except in relation to applications for registration made before the end of that period<sup>12</sup>.

1 Ie the Land Registration Act 2002 s 15: see PARA 855 ante.

2 For the meaning of 'demesne land' see PARA 883 note 2 ante.

3 As to representation in relation to Crown land see PARA 886 post.

4 Land Registration Act 2002 s 81(1).

5 Ie ibid Pt 2 Ch 2 (ss 15-22): see PARA 855 et seq ante.

6 As to land registration rules generally see PARA 1125 post.

7 Land Registration Act 2002 s 81(2).

8 Ie at the end of the period of ten years beginning with the day on which ibid s 81 came into force: s 134(2), Sch 12 para 15(1).

9 It is anticipated that the period will be extended by rules because of the difficulty of effecting registration of all demesne land within a ten-year period: see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 11.18.

10 Land Registration Act 2002 ss 15(1), 81(1), Sch 12 para 15(1).

11 Ibid s 15(3)(a)(i) (applied by s 81(1)). This provision is not in force for these purposes until 13 October 2013: see Sch 12 para 15(1)). The effect of this provision is that the Crown will no longer be able to lodge a caution against first registration of demesne land, although other persons who may have the benefit of an incumbrance to which a freehold estate which has escheated to the Crown is subject may continue to do so: see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 11.19. As to escheat see PARA 887 post.

12 Land Registration Act 2002 Sch 12 para 15(2).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(i) Crown and Duchy Land/886. Crown and Duchy land; representation.

### **886. Crown and Duchy land; representation.**

With respect to a Crown or Duchy interest<sup>1</sup>, the appropriate authority: (1) may represent the owner of the interest for all purposes of the Land Registration Act 2002; (2) is entitled to receive such notice as that person is entitled to receive under that Act; and (3) may make such applications and do such other acts as that person is entitled to make or do under that Act<sup>2</sup>. For these purposes, 'the appropriate authority' means:

- 137 (a) in relation to an interest belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners<sup>3</sup>;
- 138 (b) in relation to any other interest belonging to Her Majesty in right of the Crown, the government department having the management of the interest or, if there is no such department, such person as Her Majesty may appoint in writing under the royal sign manual<sup>4</sup>;
- 139 (c) in relation to an interest belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy<sup>5</sup>;
- 140 (d) in relation to an interest belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints<sup>6</sup>;
- 141 (e) in relation to an interest belonging to a government department, or held in trust for Her Majesty for the purposes of a government department, that department<sup>7</sup>.

1 For these purposes, 'Crown interest' means an interest belonging to Her Majesty in right of the Crown, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department; 'Duchy interest' means an interest belonging to Her Majesty in right of the Duchy of Lancaster, or belonging to the Duchy of Cornwall; and 'interest' means any estate, interest or charge in or over land and any right or claim in relation to land: Land Registration Act 2002 s 83(2).

2 Ibid s 83(1).

3 Ibid s 83(2)(a). The Crown Estate Commissioners are charged on behalf of the Crown with the management and holding of land and other property, rights and interests which for any reason cannot be vested in the Crown or can more conveniently be vested in the commissioners: see the Crown Estate Act 1961 s 1(1); and CROWN PROPERTY vol 12(1) (Reissue) PARA 283. As to the Crown Estate Commissioners see CROWN PROPERTY vol 12(1) (Reissue) PARA 280 et seq.

4 Land Registration Act 2002 s 83(2)(b). As to the royal sign manual see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 856, 908.

5 Ibid s 83(2)(c). As to the Duchy of Lancaster see CROWN PROPERTY vol 12(1) (Reissue) PARA 300 et seq.

6 Ibid s 83(2)(d). As to the Duchy of Cornwall see CROWN PROPERTY vol 12(1) (Reissue) PARA 318 et seq. As to the Duke of Cornwall see CROWN PROPERTY vol 12(1) (Reissue) PARA 320.

7 Ibid s 83(2)(e).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(i) Crown and Duchy Land/887. Escheat and bona vacantia.

### **887. Escheat and bona vacantia.**

The circumstances in which escheat, where a freehold estate determines, occurs are discussed elsewhere in this work<sup>1</sup>. Land normally escheats to the Crown but is not included within the statutory definition of 'demesne land' for the purpose of the Land Registration Act 2002 until there has been an act of entry or management by the Crown<sup>2</sup>. When land escheats to the Crown or to the Duchy of Lancaster or to the Duchy of Cornwall<sup>3</sup>, the incumbrances to which the estate is subject are not extinguished<sup>4</sup>. Under the Land Registration Act 2002, rules<sup>5</sup> may make provision about: (1) the determination of a registered freehold estate in land<sup>6</sup>; and (2) the registration<sup>7</sup> of an unregistered freehold legal estate<sup>8</sup> in land in respect of land to which a former registered freehold estate in land related<sup>9</sup>. Such rules may, in particular:

- 142 (a) make provision for determination to be dependent on the meeting of such registration requirements as the rules may specify<sup>10</sup>;
- 143 (b) make provision for entries relating to a freehold estate in land to continue in the register<sup>11</sup>, notwithstanding determination, for such time as the rules may provide<sup>12</sup>;
- 144 (c) make provision for the making in the register in relation to a former freehold estate in land of such entries as the rules may provide<sup>13</sup>;
- 145 (d) make provision imposing requirements to be met in connection with an application for the registration of such an unregistered estate as is mentioned in head (2) above<sup>14</sup>.

An application to record in the register the determination of a registered estate must be accompanied by evidence sufficient to satisfy the Chief Land Registrar<sup>15</sup> that the estate has determined<sup>16</sup>. If the registrar is satisfied that the estate has determined, he must close the registered title to the estate and cancel any notice<sup>17</sup> in any other registered title relating to it<sup>18</sup>.

With regard to bona vacantia<sup>19</sup>, a term which is now applied to: (i) the residuary estate of persons dying wholly or partially intestate and without husband or wife or relatives within the statutory classes; (ii) property and rights of a dissolved company and certain other corporations; and (iii) certain other interests including certain interests in trust property<sup>20</sup>, the Land Registration Act 1925 contained an express provision saving the rights of Her Majesty to bona vacantia<sup>21</sup> but there is no equivalent provision in the Land Registration Act 2002. Nothing in the Land Registration Act 2002 affects the operation of the right to bona vacantia<sup>22</sup>; but rules may make provision about how the passing of a registered estate or charge<sup>23</sup> as bona vacantia is to be dealt with for the purposes of that Act<sup>24</sup>.

1 See CROWN PROPERTY vol 12(1) (Reissue) PARA 233.

2 See the Land Registration Act 2002 s 132(2); and PARA 883 note 2 ante.

3 As to the Duchies of Lancaster and of Cornwall see CROWN PROPERTY vol 12(1) (Reissue) PARAS 300 et seq, 318 et seq.

4 See eg *A-G of Ontario v Mercer* (1883) 8 App Cas 767 at 772; and see *Scmlla Properties Ltd v Gesso Properties (BVI) Ltd* [1995] BCC 793 (where the authorities are reviewed).

5 As to land registration rules generally see PARA 1125 post.

6 Land Registration Act 2002 s 82(1)(a). As to the meaning of 'land' see PARA 826 note 4 ante.

7 As to registration generally see PARA 915 et seq post.

8 For the meaning of 'legal estate' see PARA 823 note 2 ante.

9 Land Registration Act 2002 s 82(1)(b). As to the objectives which the rule-making powers contained in s 82 are intended to achieve see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARAS 11.28-11.30.

Where a registered freehold estate in land has determined, the registrar may enter a note of that fact in the property register and in the property register of any inferior affected registered title: Land Registration Rules 2003, SI 2003/1417, r 173(1). Where the registrar considers that there is doubt as to whether a registered freehold estate in land has determined, the entry under r 173(1) must be modified by a statement to that effect: r 173(2). As to the property register see PARA 814 ante.

10 Land Registration Act 2002 s 82(2)(a).

11 As to the register of title see PARA 811 et seq ante.

12 Land Registration Act 2002 s 82(2)(b).

13 Ibid s 82(2)(c).

14 Ibid s 82(2)(d).

15 As to the Chief Land Registrar see PARA 1066 post.

16 Land Registration Rules 2003, SI 2003/1417, r 79(1).

17 As to notices see PARA 995 et seq post.

18 Land Registration Rules 2003, SI 2003/1417, r 79(2).

19 As to bona vacantia see CROWN PROPERTY vol 12(1) (Reissue) PARA 231 et seq; EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARAS 613-614. See also COMPANIES. As to the vesting of the property of a corporation on dissolution see CORPORATIONS vol 9(2) (2006 Reissue) PARA 1304.

20 See CROWN PROPERTY vol 12(1) (Reissue) PARA 235.

21 See the Land Registration Act 1925 s 80 (repealed).

22 See the discussion in *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 11.38.

23 For the meaning of 'registered charge' see PARA 861 note 8 ante.

24 Land Registration Act 2002 s 85. At the date at which this volume states the law, no such rules had been made.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(i) Crown and Duchy Land/888.  
Disapplication of certain requirements relating to Duchy land.

## **888. Disapplication of certain requirements relating to Duchy land.**

The Land Registration Act 2002 disapplies certain requirements relating to Duchy land<sup>1</sup>. These provisions are discussed elsewhere in this title in the context of dispositions of registered land<sup>2</sup>.

1 See the Land Registration Act 2002 s 84.

2 See PARA 910 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(ii) Land subject to Charitable Trusts/889. Charities.

## **(ii) Land subject to Charitable Trusts**

### **889. Charities.**

Trustees of land<sup>1</sup> have power to purchase a legal estate in any land in England and Wales<sup>2</sup>. Any conveyance, transfer, lease or other instrument effecting a disposition of land<sup>3</sup> which is or will, as a result of the disposition, be held by or in trust for a charity<sup>4</sup> must, where it is a registrable disposition<sup>5</sup> or a disposition which triggers the requirement of registration<sup>6</sup>, contain a statement in the prescribed terms<sup>7</sup>. Any mortgage<sup>8</sup> of land held by or in trust for a charity must, where the mortgage will be a registered disposition<sup>9</sup> or is one which triggers the requirement of registration<sup>10</sup>, contain a statement in the prescribed terms<sup>11</sup>.

1 For the meaning of 'trustees of land' see the Trusts of Land and Appointment of Trustees Act 1996 s 1; and REAL PROPERTY vol 39(2) (Reissue) PARA 66.

2 See the Trusts of Land and Appointment of Trustees Act 1996 s 6 (as amended); and TRUSTS vol 48 (2007 Reissue) PARA 1035. See also REAL PROPERTY. For the meanings of 'England' and 'Wales' see PARA 803 note 2 ante.

3 For these purposes, references to a disposition of land do not include references to: (1) a disposition of land by way of mortgage or other security; (2) any disposition of an advowson; or (3) any release of certain rentcharges: see the Charities Act 1993 s 37(11)(a); and CHARITIES vol 8 (2010) PARA 397.

4 For the meaning of 'charity' see *ibid* s 96 (as amended); and CHARITIES vol 8 (2010) PARA 1.

5 For the meaning of 'registrable disposition' see PARA 911 post; definition applied by virtue of *ibid* s 37(11) (amended by the Land Registration Act 2002 s 133, Sch 11 para 29).

6 For the meaning of 'requirement of registration' see PARA 828 note 1 ante (definition applied: see note 5 *supra*).

7 See the Charities Act 1993 s 37(1), (5), (7) (s 37(7) substituted by the Land Registration Act 2002 Sch 11 para 29); and CHARITIES vol 8 (2010) PARA 397. As to the statement to be contained in instruments effecting a disposition in favour of a charity see the Land Registration Rules 2003, SI 2003/1417, r 179; and as to the statement to be contained in instruments effecting a disposition by a charity see r 180(1).

8 'Mortgage' includes a charge: see the Charities Act 1993 s 39(6) (as amended); and CHARITIES vol 8 (2010) PARA 399.

9 For the meaning of 'registrable disposition' see PARA 911 post (definition applied by virtue of *ibid* s 39(6) (amended by the Land Registration Act 2002 Sch 11 para 29).

10 *Ie* which is one to which *ibid* s 4(1)(g) (see PARA 827 head (7) ante) applies.

11 See the Charities Act 1993 s 39(1) (as amended), s 39(1A) (as added and substituted); and CHARITIES vol 8 (2010) PARA 399. As to the statements required see the Land Registration Rules 2003, SI 2003/1417, r 180(2), (3). As to the restrictions on mortgaging land held by or in trust for a charity see CHARITIES vol 8 (2010) PARA 398.



Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(ii) Land subject to Charitable Trusts/890. Official custodian for charities.

### **890. Official custodian for charities.**

An application to register<sup>1</sup> the official custodian for charities<sup>2</sup> as proprietor of a registered estate<sup>3</sup> or a registered charge<sup>4</sup> must be accompanied by an order of the court<sup>5</sup> or an order<sup>6</sup> of the Charity Commissioners<sup>7</sup>.

1 As to the register of title see PARA 811 et seq post.

2 As to the official custodian for charities see the Charities Act 1993 s 2; and CHARITIES vol 8 (2010) PARA 297 et seq.

3 For the meaning of 'registered estate' see PARA 861 note 3 ante.

4 For the meaning of 'registered charge' see PARA 861 note 8 ante.

5 Ie an order made under the Charities Act 1993 s 21(1) (see CHARITIES vol 8 (2010) PARA 299): Land Registration Rules 2003, SI 2003/1417, r 178(1)(a).

6 Ie an order made under the Charities Act 1993 s 16 or s 18 (see CHARITIES): Land Registration Rules 2003, SI 2003/1417, r 178(1)(b).

7 Ibid r 178(1). As to the Charity Commissioners see CHARITIES vol 8 (2010) PARA 538 et seq. Where the estate or charge is vested in the official custodian by virtue of an order under the Charities Act 1993 s 18, an application to register him as proprietor (whether under Pt 2 Ch 1 (ss 3-14) (see PARA 826 et seq ante) or following a registrable disposition) must be accompanied by an application for the entry of a restriction in the form prescribed in the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form F: r 178(2). Where the official custodian is registered as proprietor of a registered estate or a registered charge, except where the estate or charge is vested in him by virtue of an order under the Charities Act 1993 s 18, the address of the charity trustees or, where the registered estate or registered charge is held on behalf of a charity which is a corporation, the address of the charity, must be entered in the register as his address for service under the Land Registration Rules 2003, SI 2003/1417, r 198 (see PARA 1130 post): r 178(3). As to the use of forms generally see PARA 1087 et seq post. As to applications for restrictions see PARA 1011 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(ii) Land subject to Charitable Trusts/891. Trustees incorporated under the Charities Act 1993.

### **891. Trustees incorporated under the Charities Act 1993.**

Particular provision is made with regard to a registrable disposition<sup>1</sup> in favour of charity trustees incorporated<sup>2</sup> under Part VII of the Charities Act 1993<sup>3</sup>.

1 For the meaning of 'registrable disposition' see PARA 911 post.

2 Ie incorporated under the Charities Act 1993 Pt VII (ss 50-62): see CHARITIES vol 8 (2010) PARAS 230, 260.

3 In any such registrable disposition the trustees must be described as 'body corporate under the Charities Act 1993 Pt VII' and the application to register the disposition must be accompanied by the certificate granted by the Charity Commissioners under s 50 (see CHARITIES vol 8 (2010) PARA 260): Land Registration Rules 2003, SI 2003/1417, r 177.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(ii) Land subject to Charitable Trusts/892. Entry of restriction.

## **892. Entry of restriction.**

Certain applications<sup>1</sup> relating to a registered or unregistered estate<sup>2</sup> held by or in trust for a non-exempt charity<sup>3</sup> must be accompanied by an application for entry of the appropriate restriction<sup>4</sup> unless, in the case of a registered estate, that restriction is already in the register<sup>5</sup>. Where the Chief Land Registrar<sup>6</sup> approves an application for registration of: (1) a disposition of registered land; or (2) a person's title under a disposition of unregistered land, and the instrument effecting the disposition contains a statement in the prescribed terms<sup>7</sup>, he must enter in the register a restriction reflecting the statutory limitation<sup>8</sup> on subsequent disposal of the land<sup>9</sup>. Where any such restriction is entered in the register in respect of any land, and the charity by or in trust for which the land is held becomes an exempt charity, the charity trustees must apply to the registrar for the removal of the entry; and on receiving any such application duly made the registrar must remove the entry<sup>10</sup>.

Where (a) any registered land is held by or in trust for an exempt charity and the charity ceases to be an exempt charity; or (b) any registered land becomes, as a result of a declaration of trust by the registered proprietor, land held in trust for a charity (other than an exempt charity), the charity trustees must apply to the registrar for such a restriction as is mentioned above to be entered in the register in respect of the land; and on receiving any such application duly made the registrar must enter such a restriction in the register in respect of the land<sup>11</sup>.

Where the registrar approves an application for registration of a person's title to land in connection with a mortgage which will trigger the requirement of compulsory registration<sup>12</sup>, the mortgage contains statements in the prescribed form<sup>13</sup> and the charity is not an exempt charity, the registrar must enter in the register a restriction reflecting the statutory limitation<sup>14</sup> on subsequent disposal<sup>15</sup>. Where any such restriction is entered in the register in respect of any land, and the charity by or in trust for which the land is held becomes an exempt charity, the charity trustees must apply to the registrar for the removal of the entry; and on receiving any such application duly made the registrar must remove the entry<sup>16</sup>.

1    le (1) an application for first registration of an unregistered estate (see PARA 826 et seq ante) unless the disposition which triggers the requirement of registration is effected by an instrument containing the statement set out in the Land Registration Rules 2003, SI 2003/1417, r 179(b) or r 180(2)(b) or (c) (see PARA 889 ante); (2) an application to register a transfer of a registered estate unless the disposition is effected by an instrument containing the statement set out in r 179(b); (3) an application under r 161 (see PARA 914 post) to register the vesting of a registered estate in a person other than the proprietor of that estate: see r 176(2).

2    For the meaning of 'registered estate' see PARA 861 note 3 ante.

3    'Exempt charity' has the same meaning as in the Charities Act 1993 s 96 (as amended) (see CHARITIES vol 8 (2010) PARA 315) and 'non-exempt charity' means a charity which is not an exempt charity: Land Registration Rules 2003, SI 2003/1417, r 217(1).

4    'The appropriate restriction' means a restriction in the form prescribed in ibid Sch 1 Form E: r 176(4).

5    Ibid r 176(2). As to applications for restrictions see PARA 1011 post.

6    As to the Chief Land Registrar see PARA 1066 post.

7    le a statement complying with the Charities Act 1993 s 37(5), (7) (s 37(7) as substituted). See PARA 889 ante; and CHARITIES vol 8 (2010) PARA 397.

8    le the limitation under ibid s 36: see CHARITIES vol 8 (2010) PARA 395 et seq.

9 Ibid s 37(8) (substituted by the Land Registration Act 2002 s 133, Sch 11 para 29(2)). The restriction must be the appropriate restriction: Land Registration Rules 2003, SI 2003/1417, r 176(1).

10 Charities Act 1993 s 37(9) (amended by the Land Registration Act 2002 s 133, Sch 11 para 29(3)). See note 3 supra.

11 Charities Act 1993 s 37(10). Where a registered estate is held by or in trust for a corporation and the corporation becomes a non-exempt charity, the charity trustees must apply for entry of the appropriate restriction: Land Registration Rules 2003, SI 2003/1417, r 176(3).

12 In such a mortgage as is described in the Charities Act 1993 s 39(1A) (as added and substituted).

13 In statements complying with ibid s 39(1), (1A) (s 39(1) as amended; and s 39(1a) as added). See PARA 889 ante; and CHARITIES vol 8 (2010) PARA 399.

14 See note 8 supra.

15 Charities Act 1993 s 39(1B) (added by the Land Registration Act 1997 s 4(1), Sch 1 para 6; and substituted by the Land Registration Act 2002 Sch 11 para 29(6)). The restriction must be the appropriate restriction: Land Registration Rules 2003, SI 2003/1417, r 176(1).

16 Charities Act 1993 s 37(9) (as amended: see note 10 supra); applied by s 39(1C) (added by the Land Registration Act 2002 Sch 11 para 29(6)).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(iii) Settlements/893. Power to make rules in relation to settlements.

### **(iii) Settlements**

#### **893. Power to make rules in relation to settlements.**

Rules<sup>1</sup> may make provision for the purposes of the Land Registration Act 2002 in relation to the application to registered land<sup>2</sup> of the enactments relating to settlements under the Settled Land Act 1925<sup>3</sup>. Such rules may include provision modifying any of those enactments in its application to registered land<sup>4</sup>.

1 As to land registration rules generally see PARA 1125 post.

2 For these purposes, 'registered land' means an interest the title to which is, or is required to be, registered: Land Registration Act 2002 s 89(3).

3 Ibid s 89(1). Subject to certain exceptions, no settlement created on or after 1 January 1997 is a settlement for the purposes of the Settled Land Act 1925: see the Trusts of Land and Appointment of Trustees Act 1996 ss 2, 27; and REAL PROPERTY vol 39(2) (Reissue) PARA 65; SETTLEMENTS vol 42 (Reissue) PARA 676. Nothing in the Land Registration Rules 2003, SI 2003/1417, r 186, Sch 7 (see PARA 894 et seq post) modifies the provisions of the Trusts of Land and Appointment of Trustees Act 1996 s 2 (see REAL PROPERTY vol 39(2) (Reissue) PARA 65; SETTLEMENTS vol 42 (Reissue) PARA 676) concerning settlements in relation to their application to registered land (as defined in the Land Registration Act 2002 s 89(3)): Land Registration Rules 2003, SI 2003/1417, Sch 7 para 16(2).

4 Land Registration Act 2002 s 89(2). See the Land Registration Rules 2003, SI 2003/1417, Sch 7; and PARA 894 et seq post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(iii) Settlements/894. First registration; restrictions.

## 894. First registration; restrictions.

Registered land<sup>1</sup> which is settled land<sup>2</sup> must be registered in the name of the tenant for life<sup>3</sup> or the statutory owner<sup>4</sup>.

An application for first registration of an unregistered legal estate<sup>5</sup> which is settled land must be accompanied by an application for entry of a restriction<sup>6</sup> in the appropriate form<sup>7</sup>. The restrictions in these forms apply respectively to the various cases referred to in those forms, and may be modified as the Chief Land Registrar<sup>8</sup> sees fit according to the circumstances<sup>9</sup>.

1 For the meaning of 'registered land' see PARA 893 note 2 ante.

2 'Settled land' has the same meaning as in the Settled Land Act 1925 (see SETTLEMENTS vol 42 (Reissue) PARA 680): Land Registration Rules 2003, SI 2003/1417, r 186, Sch 7 para 16(1). See also PARA 893 note 3 ante.

3 'Tenant for life' has the same meaning as in the Settled Land Act 1925 (see SETTLEMENTS vol 42 (Reissue) PARA 671): Land Registration Rules 2003, SI 2003/1417, Sch 7 para 16(1). References in Sch 7 to the 'tenant for life' must, where the context admits, be read as referring to the tenant for life, statutory owner, or personal representatives who is or are entitled to be registered: Sch 7 para 16(2).

4 Ibid Sch 7 para 1. 'Statutory owner' has the same meaning as in the Settled Land Act 1925 (see SETTLEMENTS vol 42 (Reissue) PARA 766): Land Registration Rules 2003, SI 2003/1417, Sch 7 para 16(1).

5 For the meaning of 'legal estate' see PARA 826 note 3 ante. As to first registration see PARA 826 et seq ante.

6 As to restrictions generally see PARA 1005 et seq post.

7 I.e. the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form G, Form H or Form I, as appropriate: Sch 7 para 2. As to the use of forms generally see PARA 1087 et seq post.

8 As to the Chief Land Registrar see PARA 1066 post.

9 Land Registration Rules 2003, SI 2003/1417, Sch 7 para 3(1). Where one of the restrictions referred to in Sch 7 para 3(1) should have been entered in the register and has not been, any person who has an interest in the settled land and who applies for such restriction is regarded as included in the Land Registration Act 2002 s 43(1)(c) (see PARA 1009 post): Land Registration Rules 2003, SI 2003/1417, Sch 7 para 3(2). Subject to Sch 7 paras 8 and 14 (see PARAS 899, 905 post), the restrictions referred to in Sch 7 para 3(1) are binding on the proprietor during his life, but do not affect a disposition by his personal representatives: Sch 7 para 3(3). 'Personal representatives' includes the special personal representatives for the purposes of any settled land where they have been appointed in relation to land: Sch 7 para 16(1). As to the register of title see PARA 811 et seq post.

## UPDATE

## 894 First registration; restrictions

NOTE 7--SI 2003/1417 Sch 1 substituted: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(iii) Settlements/895. Transfer of land into settlement.

## 895. Transfer of land into settlement.

A transfer of registered land<sup>1</sup> into settlement<sup>2</sup> must include certain specific provisions<sup>3</sup>, with any necessary alterations and additions<sup>4</sup>.

An application for the registration<sup>5</sup> of a transfer<sup>6</sup> of registered land into settlement must be accompanied by an application for entry of a restriction<sup>7</sup> in the appropriate form<sup>8</sup>.

When the Chief Land Registrar<sup>9</sup> receives the application he must register the transferee named in the transfer as the proprietor of the registered land and enter the appropriate restriction in the register<sup>10</sup>.

1 For the meaning of 'registered land' see PARA 893 note 2 ante.

2 'Settlement' has the same meaning as in the Settled Land Act 1925 (see SETTLEMENTS vol 42 (Reissue) PARA 601): Land Registration Rules 2003, SI 2003/1417, r 186, Sch 7 para 16(1). See also PARA 893 note 3 ante.

3 The provisions are set out in Sch 7 para 4(1) and are as follows: 'The Transferor and the Transferee declare that:

- 1 (1) the property is vested in the Transferee upon the trusts declared in a trust deed dated (*date*) and made between (*parties*);
- 2 (2) the trustees of the settlement are (*names of trustees*);
- 3 (3) the power of appointment of new trustees is vested in (*name*);
- 4 (4) the following powers relating to land are expressly conferred by the trust deed in addition to those conferred by the Settled Land Act 1925: (*insert additional powers*).'

However, the Land Registration Rules 2003, SI 2003/1417, Sch 7 para 4(1) provides that if the tenant for life is a minor and the transferees are the statutory owner the provisions are as follows: 'The Transferor and the Transferee declare that:

- 5 (a) the property is vested in the Transferee as statutory owner under a trust deed dated (*date*) and made between (*parties*);
- 6 (b) the tenant for life is (*name*), a minor, who was born on (*date*);
- 7 (c) the trustees of the settlement are (*names*);
- 8 (d) during the minority of the tenant for life the power of appointment of new trustees is vested in the Transferee;
- 9 (e) the following powers relating to land are expressly conferred by the trust deed in addition to those conferred by the Settled Land Act 1925: (*insert additional powers*).'

For the meaning of 'tenant for life' see PARA 894 note 3 ante; and for the meaning of 'statutory owner' see PARA 894 note 4 ante.

4 Land Registration Rules 2003, SI 2003/1417, Sch 7 para 4(1).

5 As to applications for registration see PARAS 929 et seq, 1075 et seq post.

6 'Transfer' includes an assent and a vesting assent; and 'vesting assent' has the same meaning as in the Settled Land Act 1925 (see SETTLEMENTS vol 42 (Reissue) PARA 690): Land Registration Rules 2003, SI 2003/1417, Sch 7 para 16(1).

7 As to restrictions generally see PARA 1005 et seq post.

8 I.e the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form G, Form H or Form I as appropriate: Sch 7 para 4(2). As to the use of forms generally see PARA 1087 et seq post.

9 As to the Chief Land Registrar see PARA 1066 post.

10 Land Registration Rules 2003, SI 2003/1417, Sch 7 para 4(3). As to the register of title see PARA 811 et seq post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(iii) Settlements/896. Registered land brought into settlement.

### **896. Registered land brought into settlement.**

Where registered land<sup>1</sup> has been settled and the existing registered proprietor is the tenant for life under the settlement<sup>2</sup>, the registered proprietor must: (1) make a declaration in the prescribed form<sup>3</sup>; and (2) apply for the entry of a restriction<sup>4</sup> in the prescribed form<sup>5</sup>, modified if appropriate<sup>6</sup>.

1 For the meaning of 'registered land' see PARA 893 note 2 ante.

2 For the meaning of 'settlement' see PARA 895 note 2 ante. See also PARA 893 note 3 ante. For the meaning of 'tenant for life' see PARA 894 note 3 ante.

3 Land Registration Rules 2003, SI 2003/1417, r 186, Sch 7 para 5(a). As to the prescribed form see Sch 1 Form 6. As to the use of forms generally see PARA 1087 et seq post.

4 As to restrictions generally see PARA 1005 et seq post.

5 As to the prescribed form see ibid Sch 7 para 5(b), Sch 1 Form G: see ibid Sch 7 para 5(b).

6 Ibid Sch 7 para 5(b).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(iii) Settlements/897. Registered land bought with capital money.

### **897. Registered land bought with capital money.**

Where registered land<sup>1</sup> is acquired with capital money<sup>2</sup> the transfer must be in one of the prescribed forms<sup>3</sup> and must include certain specific provisions<sup>4</sup>, with any necessary alterations and additions<sup>5</sup>.

An application for registration<sup>6</sup> of the transfer<sup>7</sup> must be accompanied by an application for entry of a restriction<sup>8</sup> in the appropriate form<sup>9</sup>.

1 For the meaning of 'registered land' see PARA 893 note 2 ante.

2 'Capital' money has the same meaning as in the Settled Land Act 1925 (see SETTLEMENTS vol 42 (Reissue) PARA 795): Land Registration Rules 2003, SI 2003/1417, r 186, Sch 7 para 16(1).

3 Is prescribed by ibid r 206 (see PARA 1087 post).

4 The provisions are set out in ibid Sch 7 para 6(1) and are as follows: 'The Transferee declares that:

10 (1) the consideration has been paid out of capital money;

11 (2) the Property is vested in the Transferee upon the trusts declared in a trust deed dated (*date*) and made between (*parties*);

12 (3) the trustees of the settlement are (*names of trustees*);

13 (4) the power of appointment of new trustees is vested in (*name*);

- 14 (5) the following powers relating to land are expressly conferred by the trust deed in addition to those conferred by the Settled Land Act 1925: (*set out additional powers*).<sup>1</sup>.

5 Land Registration Rules 2003, SI 2003/1417, Sch 7 para 6(1).

6 As to applications for registration see PARAS 929 et seq, 1075 et seq post.

7 As to the meaning of 'transfer' see PARA 895 note 6 ante.

8 As to restrictions generally see PARA 1005 et seq post.

9 I.e. the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form G, Form H or Form I, as appropriate: Sch 7 para 2. As to the use of forms generally see PARA 1087 et seq post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(iii) Settlements/898. Duty to apply for restrictions when registered land is settled.

### **898. Duty to apply for restrictions when registered land is settled.**

Where registered land<sup>1</sup> is settled land<sup>2</sup>, the proprietor or (if there is no proprietor) the personal representatives<sup>3</sup> of a deceased proprietor must apply to the Chief Land Registrar<sup>4</sup> for the entry of such restrictions<sup>5</sup> as may be appropriate to the case<sup>6</sup>. The application must state that the restrictions applied for are required for the protection of the beneficial interests and powers under the settlement<sup>7</sup>. The registrar must enter such restrictions without inquiry as to the terms of the settlement<sup>8</sup>.

1 For the meaning of 'registered land' see PARA 893 note 2 ante.

2 For the meaning of 'settled land' see PARA 894 note 2 ante.

3 As to the meaning of 'personal representatives' see PARA 894 note 9 ante. Nothing in the Land Registration Rules 2003, SI 2003/1417, r 186, Sch 7 para 7 affects the rights and powers of personal representatives for purposes of administration: Sch 7 para 7(4).

4 As to the Chief Land Registrar see PARA 1066 post.

5 I.e. in addition to a restriction in the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form G, Form H or Form I. As to restrictions generally see PARA 1005 et seq post. As to the use of forms generally see PARA 1087 et seq post.

6 Ibid Sch 7 para 7(1).

7 Ibid Sch 7 para 7(2).

8 Ibid Sch 7 para 7(3). This is subject to the Land Registration Act 2002 s 43(3) (see PARA 1012 post).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(iii) Settlements/899. Proprietor ceasing in his lifetime to be the tenant for life.

### **899. Proprietor ceasing in his lifetime to be the tenant for life.**

Where a registered proprietor ceases in his lifetime to be a tenant for life<sup>1</sup> and has not become absolutely entitled to the registered land<sup>2</sup>:

- 146 (1) he must transfer the land to his successor in title or, if the successor is a minor, to the statutory owner<sup>3</sup>; and
- 147 (2) on the registration of the successor in title or statutory owner as proprietor, the trustees of the settlement<sup>4</sup>, if the settlement continues, must apply for such alteration in the restrictions<sup>5</sup> as may be required for the protection of the beneficial interests and powers under the settlement<sup>6</sup>.

1 For the meaning of 'tenant for life' see PARA 894 note 3 ante.

2 For the meaning of 'registered land' see PARA 893 note 2 ante.

3 Land Registration Rules 2003, SI 2003/1417, r 186, Sch 7 para 8(a). For the meaning of 'statutory owner' see PARA 894 para 4 ante.

4 'Trustees of the settlement' has the same meaning as in the Settled Land Act 1925 (see SETTLEMENTS vol 42 (Reissue) PARA 750); Land Registration Rules 2003, SI 2003/1417, Sch 7 para 16(1). For the meaning of 'settlement' see PARA 895 note 2 ante.

5 As to restrictions generally see PARA 1005 et seq post.

6 Land Registration Rules 2003, SI 2003/1417, Sch 7 para 8(b).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(iii) Settlements/900. Tenant for life or statutory owner entitled to have the settled land vested in him.

#### **900. Tenant for life or statutory owner entitled to have the settled land vested in him.**

Where a tenant for life<sup>1</sup> or statutory owner<sup>2</sup> who, if the registered land<sup>3</sup> were not registered, would be entitled to have the settled land<sup>4</sup> vested in him, is not the registered proprietor, the registered proprietor must at the cost of the trust estate execute such transfers<sup>5</sup> as may be required for giving effect on the register<sup>6</sup> to the rights of such tenant for life or statutory owner<sup>7</sup>.

1 For the meaning of 'tenant for life' see PARA 894 note 3 ante.

2 For the meaning of 'statutory owner' see PARA 894 para 4 ante.

3 For the meaning of 'registered land' see PARA 893 note 2 ante.

4 For the meaning of 'settled land' see PARA 894 note 2 ante.

5 As to the meaning of 'transfer' see PARA 895 note 6.

6 As to the register of title see PARA 811 et seq post.

7 Land Registration Rules 2003, SI 2003/1417, r 186, Sch 7 para 9.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1.  
REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(iii) Settlements/901. Registration of statutory owner during a minority otherwise than on death.

#### **901. Registration of statutory owner during a minority otherwise than on death.**



If a minor becomes entitled in possession (or will become entitled in possession on attaining full age) to registered land<sup>1</sup> otherwise than on a death, the statutory owner<sup>2</sup> during the minority is entitled to require the settled land<sup>3</sup> to be transferred<sup>4</sup> to himself and to be registered as proprietor accordingly<sup>5</sup>.

The transfer to the statutory owner must be in the prescribed form<sup>6</sup>, and must not refer to the settlement<sup>7</sup>. An application to register the transfer must be accompanied by an application for entry of a restriction in the prescribed form<sup>8</sup>.

1 For the meaning of 'registered land' see PARA 893 note 2 ante.

2 For the meaning of 'statutory owner' see PARA 894 para 4 ante.

3 For the meaning of 'settled land' see PARA 894 note 2 ante.

4 As to the meaning of 'transfer' see PARA 895 note 6.

5 Land Registration Rules 2003, SI 2003/1417, r 186, Sch 7 para 10(1).

6 *Ie* *ibid* Sch 1 Form TR1: Sch 7 para 10(2)(a). As to the use of forms generally see PARA 1087 *et seq post*.

7 *Ibid* Sch 7 para 10(2)(b). For the meaning of 'settlement' see PARA 894 note 2 ante.

8 *Ie* *ibid* Sch 1 Form H: Sch 7 para 10(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(iii) Settlements/902. Registration of special personal representatives.

## **902. Registration of special personal representatives.**

Where land was settled<sup>1</sup> before the death of the sole or last surviving joint registered proprietor and not by his will, and the settlement<sup>2</sup> continues after his death, the personal representatives<sup>3</sup> in whom the registered land<sup>4</sup> vests under the Administration of Estates Act 1925<sup>5</sup> may apply to be registered as proprietor in place of the deceased proprietor<sup>6</sup>. The application<sup>7</sup> must be accompanied by the grant of probate or letters of administration of the deceased proprietor limited to the settled land<sup>8</sup>. The personal representatives must be registered in place of the deceased proprietor and the following added after his name: 'special executor or executrix (or administrator or administratrix) of [name], deceased.'<sup>9</sup>.

1 For the meaning of 'settled land' see PARA 894 note 2 ante.

2 For the meaning of 'settlement' see PARA 895 note 2 ante.

3 As to the meaning of 'personal representatives' see PARA 894 note 9 ante.

4 For the meaning of 'registered land' see PARA 893 note 2 ante.

5 As to vesting under the Administration of Estates Act 1925 see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 230 *et seq*.

6 Land Registration Rules 2003, SI 2003/1417, r 186, Sch 7 para 11(1).

7 As to applications for registration see PARAS 929 *et seq*, 1075 *et seq post*.

8 Land Registration Rules 2003, SI 2003/1417, Sch 7 para 11(2).

9 Ibid Sch 7 para 11(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(iii) Settlements/903. Transfer on the death of the tenant for life.

### **903. Transfer on the death of the tenant for life.**

Where the settlement<sup>1</sup> continues after the death of the proprietor who was the tenant for life<sup>2</sup>:

- 148 (1) an application to register a transfer<sup>3</sup> by the personal representatives<sup>4</sup> to the person next entitled to the registered land<sup>5</sup> which is settled land<sup>6</sup> must be accompanied by:
- 11
20. (a) if the personal representatives are not already registered, the grant of probate or letters of administration of the deceased proprietor limited to the settled land<sup>7</sup>;
21. (b) a transfer in the prescribed form<sup>8</sup>;
22. (c) an application for entry of a restriction in the prescribed form<sup>9</sup>;
- 12
- 149 (2) the transfer must contain certain specific provisions<sup>10</sup> with any necessary alterations or additions<sup>11</sup>.

Where the settlement ends on the death of the proprietor, an application to register<sup>12</sup> a transfer by the personal representatives to the person entitled must be accompanied by:

- 150 (i) if the personal representatives are not already registered, the grant of probate or letters of administration of the deceased proprietor<sup>13</sup>;
- 151 (ii) the prescribed form<sup>14</sup> for cancellation of the restriction entered on the register<sup>15</sup> relating to the settlement<sup>16</sup>.

The Chief Land Registrar<sup>17</sup> is not under a duty to investigate the reasons any transfer is made by the personal representatives or consider the contents of the will and, provided the terms of any restriction on the register are complied with, he must assume, whether he knows of the terms of the will or not, that the personal representatives are acting correctly and within their powers<sup>18</sup>.

1 For the meaning of 'settlement' see PARA 894 note 2 ante.

2 For the meaning of 'tenant for life' see PARA 894 note 3 ante.

3 As to the meaning of 'transfer' see PARA 895 note 6.

4 As to the meaning of 'personal representatives' see PARA 894 note 9 ante.

5 For the meaning of 'registered land' see PARA 893 note 2 ante.

6 For the meaning of 'settled land' see PARA 894 note 2 ante.

7 Land Registration Rules 2003, SI 2003/1417, r 186, Sch 7 para 12(1)(a)(i).

8 Ibid Sch 7 para 12(1)(a)(ii). The prescribed form is Sch 1 Form AS1 or Form AS2, as appropriate: Sch 7 para 12(1)(a)(ii). As to the use of forms generally see PARA 1087 et seq post.

9 Ibid Sch 7 para 12(1)(a)(iii). The prescribed form is Sch 1 Form G or Form H, as appropriate: see Sch 7 para 12(1)(a)(iii).

10 The provisions are set out in ibid Sch 7 para 12(1)(b) and are as follows: 'The Personal Representatives and the Transferee declare that:

- 15 (1) the Property is vested in the Transferee upon the trusts declared in [a trust deed dated (*date*) and made between (*parties*)] or [the will of (*name of deceased*) proved on (*date*)];
- 16 (2) the trustees of the settlement are (*names of trustees*);
- 17 (3) the power of appointment of new trustees is vested in (*name*);
- 18 (4) the following powers relating to land are expressly conferred by the will in addition to those conferred by the Settled Land Act 1925: (*set out additional powers*).'

11 Land Registration Rules 2003, SI 2003/1417, Sch 7 para 12(1)(b).

12 As to applications for registration see PARAS 929 et seq, 1075 et seq post.

13 Land Registration Rules 2003, SI 2003/1417, Sch 7 para 12(2)(a).

14 Ie ibid Sch 1 Form RX3: see Sch 7 para 12(2)(b). As to the use of forms generally see PARA 1087 et seq post.

15 As to the register of title see PARA 811 et seq post.

16 Land Registration Rules 2003, SI 2003/1417, Sch 7 para 12(2)(b).

17 As to the Chief Land Registrar see PARA 1066 post.

18 Land Registration Rules 2003, SI 2003/1417, Sch 7 para 12(3).

## UPDATE

### 903 Transfer on the death of the tenant for life

NOTE 8--SI 2003/1417 Sch 1 Form AS1, AS2 substituted by SI 2008/1919; and amended by SI 2009/1996.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(iii) Settlements/904. Minority where settlement arises under a will or intestacy.

### 904. Minority where settlement arises under a will or intestacy.

Where a settlement<sup>1</sup> is created or arises under the will or intestacy of a person who died before 1 January 1997:

- 152 (1) the personal representatives<sup>2</sup> under the will or intestacy under which the settlement is created or arises must, during a minority, be registered as proprietors and will have all the powers conferred by the Settled Land Act 1925 on the tenant for life<sup>3</sup> and on the trustees of the settlement<sup>4</sup>;
- 153 (2) when a minor becomes beneficially entitled to an estate in fee simple or a term of years absolute in the registered land<sup>5</sup>, or would, if he were of full age, be or have the powers of a tenant for life, the personal representatives must (unless they

are themselves the statutory owner<sup>6</sup>) during the minority give effect on the register to the directions of the statutory owner<sup>7</sup>;

- 154 (3) in particular, the statutory owner must, after administration is completed as respects the registered land, direct the personal representatives to apply for a restriction in the prescribed form<sup>8</sup>.

1 For the meaning of 'settlement' see PARA 895 note 2 ante.

2 As to the meaning of 'personal representatives' see PARA 894 note 9 ante.

3 For the meaning of 'tenant for life' see PARA 894 note 3 ante.

4 Land Registration Rules 2003, SI 2003/1417, r 186, Sch 7 para 13(1)(a).

5 For the meaning of 'registered land' see PARA 893 note 2 ante.

6 For the meaning of 'statutory owner' see PARA 894 para 4 ante.

7 Land Registration Rules 2003, SI 2003/1417, Sch 7 para 13(1)(b). Where under the Settled Land Act 1925 s 19(3) (see SETTLEMENTS vol 42 (Reissue) PARA 761) there is a tenant for life of full age, he is entitled to be registered as proprietor during any minority referred to in s 19(3), but subject to the restrictions in the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form G or Form I, as appropriate: Sch 7 para 13(5). Nothing in Sch 7 para 13 affects the right of a statutory owner to be registered as proprietor: Sch 7 para 13(6). As to the use of forms generally see PARA 1087 et seq post.

8 Ibid Sch 7 para 13(1)(c). The application must be in the form prescribed in Sch 1 Form H: see Sch 7 para 13(1)(c). The application for the restriction in Sch 1 Form H must be made by the personal representatives: Sch 7 para 13(2). On such application the Chief Land Registrar is under no duty to consider or call for any information concerning:

19 (1) the reason the application is made; or

20 (2) the terms of the will or the devolution under the intestacy; or

21 (3) whether the direction by the statutory owner was actually given or not, or its terms,

and whether he has notice of those matters or not, he must assume that the personal representatives are acting according to the directions given and that the directions were given by the statutory owner and were correct: Sch 7 para 13(3). A disponee dealing with the personal representatives who complies with the restriction entered under Sch 7 para 13(2) is not concerned to see or enquire whether any directions have been given by the statutory owner with regard to the disposition to him: Sch 7 para 13(4). As to the Chief Land Registrar see PARA 1066 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/1. REGISTRATION OF TITLE TO LAND/(7) SPECIAL CASES/(iii) Settlements/905. Discharge in respect of beneficial interests and powers under a settlement.

### **905. Discharge in respect of beneficial interests and powers under a settlement.**

Where the trustees of a settlement<sup>1</sup> desire to discharge registered land<sup>2</sup> from the beneficial interests and powers under the settlement they may do so by any document sufficient to discharge it<sup>3</sup>.

Where a proprietor or the personal representatives<sup>4</sup> of a deceased proprietor has or have, in good faith, complied with the relevant requirements<sup>5</sup> in executing a transfer<sup>6</sup> of settled land<sup>7</sup> or discharge of trustees and in applying for the appropriate restrictions that may be required for the protection of the beneficial interests and powers under a settlement: (1) he is or they are absolutely discharged from all liability in respect of the equitable interests and powers taking

effect under the settlement<sup>8</sup>; and (2) he is or they are entitled to be kept indemnified at the cost of the trust estate from all liabilities affecting the settled land<sup>9</sup>.

- 1 For the meaning of 'settlement' see PARA 895 note 2 ante.
- 2 For the meaning of 'registered land' see PARA 893 note 2 ante.
- 3 Land Registration Rules 2003, SI 2003/1417, r 186, Sch 7 para 14.
- 4 As to the meaning of 'personal representatives' see PARA 894 note 9 ante.
- 5 See the requirements of the Land Registration Rules 2003, SI 2003/1417, Sch 7.
- 6 As to the meaning of 'transfer' see PARA 895 note 6.
- 7 For the meaning of 'settled land' see PARA 894 note 2 ante.
- 8 Land Registration Rules 2003, SI 2003/1417, Sch 7 para 15(a).
- 9 Ibid Sch 7 para 15(b).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(1) POWERS OF DISPOSITION/906. Owner's powers in relation to a registered estate.

## **2. DISPOSITIONS OF REGISTERED LAND**

### **(1) POWERS OF DISPOSITION**

#### **906. Owner's powers in relation to a registered estate.**

Owner's powers<sup>1</sup> in relation to a registered estate<sup>2</sup> consist of (1) power to make a disposition of any kind permitted by the general law in relation to an interest of that description, other than a mortgage by demise or sub-demise<sup>3</sup>; and (2) power to charge the estate at law with the payment of money<sup>4</sup>.

- 1 As to the right to exercise owner's powers see PARA 908 post.
- 2 For the meaning of 'registered estate' see PARA 861 note 3 ante.
- 3 Land Registration Act 2002 s 23(1)(a). Mortgages by demise or sub-demise are in practice obsolete: see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 4.7. Cf the Land Registration Act 1925 s 18 (repealed) (powers of disposition of registered freeholds) and s 21 (repealed) (powers of disposition of registered leaseholds), which contained a list of specific powers of disposition.
- 4 Land Registration Act 2002 s 23(1)(b); and see eg *Cityland and Property (Holdings) Ltd v Dabrah* [1968] Ch 166 at 171.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(1) POWERS OF DISPOSITION/907. Owner's powers in relation to a registered charge.

#### **907. Owner's powers in relation to a registered charge.**

Owner's powers<sup>1</sup> in relation to a registered charge<sup>2</sup> consist of: (1) power to make a disposition of any kind permitted by the general law in relation to an interest of that description, other than a legal sub-mortgage<sup>3</sup>; and (2) power to charge at law with the payment of money indebtedness secured by the registered charge<sup>4</sup>.

1 As to the right to exercise owner's powers see PARA 908 post.

2 For the meaning of 'registered charge' see PARA 861 note 8 ante.

3 Land Registration Act 2002 s 23(2)(a). For these purposes, 'legal sub-mortgage' means: (1) a transfer by way of mortgage; (2) a sub-mortgage by sub-demise; and (3) a charge by way of legal mortgage: s 23(3).

4 Ibid s 23(2)(b). A charge under s 23(2)(b) is known as a 'sub-charge' (s 132(1)), and is thus the only way in which a registered chargee can create a legal sub-charge. Cf the Land Registration Rules 1925, SR & O 1925/1093, r 163(1) (revoked).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(1) POWERS OF DISPOSITION/908. Right to exercise owner's powers.

### **908. Right to exercise owner's powers.**

A person is entitled to exercise owner's powers<sup>1</sup> in relation to a registered estate<sup>2</sup> or charge<sup>3</sup> if he is the registered proprietor<sup>4</sup>, or entitled to be registered as the proprietor<sup>5</sup>.

1 As to owner's powers see PARAS 906-907 ante.

2 For the meaning of 'registered estate' see PARA 861 note 3 ante.

3 For the meaning of 'registered charge' see PARA 861 note 8 ante.

4 Land Registration Act 2002 s 24(a).

5 Ibid s 24(b). As to the entitlement for an applicant for first registration to be registered as proprietor see PARA 826 ante; as to the entitlement of an executor of a deceased registered proprietor to be registered as proprietor see PARA 921 post; as to the entitlement for an adverse possessor to be registered as proprietor see PARA 1032 post; and as to the entitlement of a disponee to be registered as proprietor see PARA 911 et seq post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(1) POWERS OF DISPOSITION/909. Protection of disponees.

### **909. Protection of disponees.**

A person's right to exercise owner's powers<sup>1</sup> in relation to a registered estate<sup>2</sup> or charge<sup>3</sup> is to be taken to be free from any limitation affecting the validity of a disposition<sup>4</sup>; but this does not apply to a limitation reflected by an entry in the register<sup>5</sup> or imposed by, or under, the Land Registration Act 2002<sup>6</sup>.

This has effect only for the purpose of preventing the title of a disponee being questioned<sup>7</sup> and so does not affect the lawfulness of a disposition<sup>8</sup>.

- 1 As to owner's powers see PARAS 906-907 ante; and as to the right to exercise such powers see PARA 908 ante.
- 2 For the meaning of 'registered estate' see PARA 861 note 3 ante.
- 3 For the meaning of 'registered charge' see PARA 861 note 8 ante.
- 4 Land Registration Act 2002 s 26(1).
- 5 Ibid s 26(2)(a). As to the register of title see PARA 811 et seq ante.
- 6 Ibid s 26(2)(b). Cf *State Bank of India v Sood* [1997] Ch 276 at 284, CA, per Peter Gibson LJ ('in registered conveyancing it is fundamental that any registered proprietor can exercise all or any powers of disposition unless some entry on the register exists to curtail or remove those powers').
- 7 See eg *Hounslow London Borough Council v Hare* (1990) 24 HLR 9 (unsuccessful attempt to rectify register against a buyer where the seller had no statutory power to make the disposition to her but the register was silent as to that fact).
- 8 Land Registration Act 2002 s 26(3). A disponent making a disposition beyond his powers is, however, liable eg for a breach of trust; and a donee knowingly receiving trust property in breach of trust may also be liable in equity: see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 4.11. See further EQUITY; TRUSTS vol 48 (2007 Reissue) PARAS 701, 1088.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(1) POWERS OF DISPOSITION/910. Mode of exercise of owner's powers.

### **910. Mode of exercise of owner's powers.**

A registrable disposition<sup>1</sup> of a registered estate<sup>2</sup> or charge<sup>3</sup> only has effect if it complies with such requirements as to form and content as rules<sup>4</sup> may provide<sup>5</sup>; and rules may apply this provision to any other kind of disposition which depends for its effect on registration<sup>6</sup>.

Nothing in any enactment relating to the Duchy of Lancaster or the Duchy of Cornwall<sup>7</sup> has effect to impose any requirement with respect to formalities or enrolment in relation to a disposition by a registered proprietor<sup>8</sup>.

- 1 As to registrable dispositions see PARA 911 post.
- 2 For the meaning of 'registrable estate' see PARA 861 note 3 ante.
- 3 For the meaning of 'registrable charge' see PARA 861 note 8 ante.
- 4 As to land registration rules generally see PARA 1125 post.
- 5 Land Registration Act 2002 s 25(1). See further PARA 915 et seq post.
- 6 Ibid s 25(2).
- 7 As to the Duchy of Lancaster and the Duchy of Cornwall see CROWN PROPERTY vol 12(1) (Reissue) PARA 300 et seq.
- 8 Land Registration Act 2002 s 84.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(i) In general/911.  
Dispositions required to be registered; in general.

## **(2) REGISTRABLE DISPOSITIONS**

### **(i) In general**

#### **911. Dispositions required to be registered; in general.**

If a disposition of a registered estate<sup>1</sup> or registered charge<sup>2</sup> is required to be completed by registration<sup>3</sup>, it does not operate at law until the relevant registration requirements are met<sup>4</sup>. Such a disposition is referred to as a 'registrable disposition'<sup>5</sup>.

Rules<sup>6</sup> may make provision about applications to the Chief Land Registrar<sup>7</sup> for the purpose of meeting registration requirements<sup>8</sup>.

Separate provision is made with regard to the requirement for simultaneous registration of certain dispositions made by documents in electronic form and electronically communicated to the registrar<sup>9</sup>.

1 For the meaning of 'registered estate' see PARA 861 note 3 ante.

2 For the meaning of 'registered charge' see PARA 861 note 8 ante.

3 As to dispositions that are required to be completed by registration see PARAS 912-914 post.

4 Land Registration Act 2002 s 27(1). As to the relevant registration requirements see s 27(4), Sch 2; and PARA 915 et seq post. Schedule 2 Pt 1 (paras 1-8) deals with the registration requirements relating to those dispositions of registered estates which are required to be completed by registration (Sch 2 para 1): see PARA 915 et seq post. Schedule 2 Pt 2 (paras 9-11) deals with the registration requirements relating to those dispositions of registered charges which are required to be completed by registration (Sch 2 para 9): see PARAS 927-928 post.

5 'Registrable disposition' means a disposition which is required to be completed by registration under ibid s 27: s 132(1).

6 As to land registration rules generally see PARA 1125 post.

7 As to the Chief Land Registrar see PARA 1066 post.

8 Land Registration Act 2002 s 27(6).

9 See ibid s 93; and PARA 1052 post. Section 27(1) (see the text and notes 1-4 supra) does not apply to a disposition to which s 93 applies: s 93(4).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(i) In general/912.  
Registrable dispositions of a registered estate.

#### **912. Registrable dispositions of a registered estate.**

In the case of a registered estate<sup>1</sup>, the dispositions which are required to be completed by registration<sup>2</sup> are:

- 155 (1) a transfer<sup>3</sup>;



- 156 (2) where the registered estate is an estate in land<sup>4</sup>, the grant of a term of years absolute<sup>5</sup>:
- 13
- 23. (a) for a term of more than seven years<sup>6</sup> from the date of the grant<sup>7</sup>;
  - 24. (b) to take effect in possession after the end of the period of three months beginning with the date of the grant<sup>8</sup>;
  - 25. (c) under which the right to possession is discontinuous<sup>9</sup>;
  - 26. (d) in pursuance of the right to buy<sup>10</sup> under Part V of the Housing Act 1985<sup>11</sup>; or
  - 27. (e) in circumstances<sup>12</sup> where there is a disposal by a landlord which leads to a person no longer being a secure tenant<sup>13</sup>;
- 14
- 157 (3) where the registered estate is a franchise or manor, the grant of a lease<sup>14</sup>;
- 158 (4) the express grant<sup>15</sup> or reservation of an easement, right, or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute<sup>16</sup>, other than one which is capable of being registered under the Commons Registration Act 1965<sup>17</sup>;
- 159 (5) the express grant or reservation of: (a) a rentcharge in possession issuing out of or charged on land being either perpetual or for a term of years absolute<sup>18</sup>; or (b) a right of entry<sup>19</sup> exercisable over or in respect of a legal term of years absolute, or annexed, for any purpose, to a legal rentcharge<sup>20</sup>; and
- 160 (6) the grant of a legal charge<sup>21</sup>.

For these purposes, however, neither the grant of a term of years absolute under a PPP lease<sup>22</sup> relating to transport in London nor the express grant of such an interest as is mentioned in head (4) or head (5) above, where the interest is created for the benefit of a leasehold estate in land under a PPP lease, is a disposition requiring to be completed by registration<sup>23</sup>.

1 For the meaning of 'registered estate' see PARA 861 note 3 ante.

2 Land Registration Act 2002 s 27(2); and see PARA 911 ante. As to dispositions by operation of law see PARA 913 post.

3 Ibid s 27(2)(a).

4 As to the meaning of 'land' see PARA 826 note 4 ante.

5 As to the meaning of 'term of years absolute' see PARA 827 note 15 ante.

6 The Lord Chancellor may by order substitute for the term specified in head (2)(a) in the text such shorter term as he thinks fit: Land Registration Act 2002 s 118(1)(d).; and see PARA 826 note 6 ante. At the date at which this volume states the law, no such order had been made. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

7 Ibid s 27(2)(b)(i).

8 Ibid s 27(2)(b)(ii).

9 Ibid s 27(2)(b)(iii).

10 Ie under the Housing Act 1985 Pt V (ss 118-188) (as amended): see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1795 et seq.

11 Land Registration Act 2002 s 27(2)(b)(iv).

12 Ie in circumstances where the Housing Act 1985 s 171A (as added) applies (see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1900): Land Registration Act 2002 s 27(2)(b)(v).

13 Ibid s 27(2)(b)(v).

14 Ibid s 27(2)(c).

15 For this purpose, the reference to express grant does not include grant as a result of the operation of the Law of Property Act 1925 s 62 (general words implied in conveyances: see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 236); Land Registration Act 2002 s 27(7).

16 Ie the express grant or reservation of an interest falling within the Law of Property Act 1925 s 1(2)(a) (see REAL PROPERTY vol 39(2) (Reissue) PARAS 45, 53); Land Registration Act 2002 s 27(2)(d).

17 Ibid s 27(2)(d). As to registration under the Commons Registration Act 1965 see COMMONS vol 13 (2009) PARA 506 et seq.

18 Ie the express grant or reservation of an interest falling within the Law of Property Act 1925 s 1(2)(b) (see REAL PROPERTY vol 39(2) (Reissue) PARAS 45, 93); Land Registration Act 2002 s 27(2)(e).

19 Ie the express grant or reservation of an interest falling within the Law of Property Act 1925 s 1(2)(e) (see REAL PROPERTY vol 39(2) (Reissue) PARA 45); Land Registration Act 2002 s 27(2)(e).

20 Ibid s 27(2)(e).

21 Ibid s 27(2)(f).

22 For the meaning of 'PPP lease' see PARA 826 note 11 ante.

23 Land Registration Act 2002 s 90(3)(a), (b).

## UPDATE

### 912 Registrable dispositions of a registered estate

TEXT AND NOTES 4-13--In relation to leases within head (2) granted on or after 19 June 2006, subject to the Land Registration Rules 2003, SI 2003/1417, r 72A(3), (4), (6), on completion of the lease by registration the registrar must (where appropriate) make entries in the relevant individual register in respect of interests contained in that lease which are of the nature referred to in Sch 1A clause LR9, LR10, LR11 or LR12: r 72A(1), (2) (r 72A, Sch 1A added by SI 2005/1982). Subject to SI 2003/1417 r 58A(3), where the lease is a prescribed clauses lease and contains a prohibition or restriction on disposal of the nature referred to in Sch 1A clause LR8 or contains interests of the nature referred to in Sch 1A clause LR9, LR10, LR11 or LR12, but the prohibition or restriction or interests are not specified or referred to in Sch 1A clause LR9, LR10, LR11 or LR12 or the lease does not contain the required wording in relation to them, then the registrar need take no action in respect of them unless separate application is made: r 72A(3). 'Prescribed clauses lease' and 'required wording' have the same meaning as in r 58A(4): r 72A(7)(b).

The registrar need make no entries in individual registers in respect of interests of the nature referred to in Sch 1A clause LR9, LR10 or LR11 or a restriction set out in Sch 1A clause LR13 where (1) in the case of a prescribed clauses lease, the title numbers of the individual registers have not been given in Sch 1A clause LR2.2, or (2) in any other case, the title numbers of the individual registers required by Sch 1A clause LR2.2 have not been given in Sch 1 Form AP1 panel 2 lodged for the purpose of completing the lease by registration, unless separate application is made in respect of the interests or restriction: r 72A(4). Where a separate application required by r 72A(3) or (4) is made in Sch 1 Form AP1 and is in respect of either a prohibition or restriction on disposal of the lease or the grant or reservation of an easement, Sch 1 Form AP1 must specify the particular clause, schedule or paragraph of a schedule where the prohibition or restriction or easement is contained in the lease: r 72A(5).

The requirement under r 72A(2) to make an entry in respect of an interest of the nature referred to in Sch 1A clause LR12 is satisfied by entry (where appropriate) of notice of the interest created: r 72A(6).

On completion of a lease within the Land Registration Act 2002 s 27(2)(b) or s 27(2)(c) by registration, the registrar must enter a notice or make another entry, as appropriate, in the individual register of the registered lease in respect of any interest which at the time of registration, is the subject of a notice in the individual register of the registered estate out of which the lease is granted, and the registrar considers may affect the registered lease: SI 2003/1417 r 72B (added by SI 2008/1919).

SI 2003/1417 r 72C applies to dispositions of registered estates within the Land Registration Act 2002 s 27(2) to which SI 2003/1417 rr 72, 72A do not apply: SI 2003/1417 r 72C(1) (r 72C added by SI 2008/1919). Subject to SI 2003/1417 r 72C(3), on registration of a disposition within r 72C(1), the registrar must, where appropriate, make entries in the relevant individual registers in respect of any rights, restrictive covenants, provisions and other matters created by the disposition which are capable of being entered in an individual register: r 72C(2). The registrar need make no entries in individual registers under r 72C(2) where the title numbers of those registers have not been given in panel 2 of the Form AP1 lodged for the purpose of registering the disposition, unless separate application is made in respect of the rights, restrictive covenants, provisions or other matters: r 72C(3). Unless the Form AP1 contains a specific application, the registrar need not complete under the Land Registration Act 2002 Sch 2 para 6 the registration of an interest of a kind falling within the Law of Property Act 1925 s 1(2)(b) contained in a disposition within SI 2003/1417 r 72C(1): r 72C(4).

Subject to r 58A(3), (a) a prescribed clauses lease must begin with the required wording or that wording must appear immediately after any front sheet (r 58A(1) (r 58A added by SI 2005/1982); (b) where a person applies for completion of a lease by registration and claims that the lease is not a prescribed clauses lease because the lease falls within head (iii)(c) or (d), he must lodge with his application a certificate by a conveyancer to that effect or other evidence to satisfy the registrar as to his claim (SI 2003/1417 r 58A(2)). If it appears to the registrar that a lease is not a prescribed clauses lease, then r 58A(1) and, so far as appropriate, rr 58A(2) and 72A(3) do not apply to that lease: r 58A(3).

'Required wording' means the wording in Sch 1A clauses LR1-LR14 completed in accordance with the instructions in Sch 1A and as appropriate for the particular lease: r 58A(4). 'Front sheet' means a front cover sheet, or a contents sheet if it is at the lease's beginning, or a front cover sheet and contents sheet where the contents sheet is immediately after the front cover sheet; and a 'contents sheet' means a contents sheet or index sheet (in each case, however described) or both: r 58A(4). 'Prescribed clauses lease' means a lease which (i) is within the Land Registration Act 2002 s 27(2) (b) (see head (2) in the text), (ii) is granted on or after 19 June 2006, (iii) is not granted in a form expressly required (A) by an agreement entered into before 19 June 2006, (B) by an order of the court, (C) by or under an enactment, or (D) by a necessary consent or licence for the grant of the lease given before 19 June 2006, and (iv) is not a lease by virtue of a variation of a lease which is a deemed surrender and re-grant: r 58A(4).

TEXT AND NOTE 17--Reference to Commons Registration Act 1965 is now to Commons Act 2006 Pt 1 (ss 1-25): 2002 Act s 27(2)(d) (amended by Commons Act 2006 Sch 5 para 8(2) (in force in England in relation to the specified pilot areas: SI 2008/1960).

### **913. Registrable dispositions of a registered charge.**

In the case of a registered charge<sup>1</sup>, the dispositions which are required to be completed by registration<sup>2</sup> are: (1) a transfer<sup>3</sup>; and (2) the grant of a sub-charge<sup>4</sup>.

1 For the meaning of 'registered charge' see PARA 861 note 8 ante.

2 Land Registration Act 2002 s 27(3); and see PARA 911 ante.

3 Ibid s 27(3)(a).

4 Ibid s 27(3)(b). For the meaning of 'sub-charge' see PARA 907 note 4 ante.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(i) In general/914.  
Registrable dispositions by operation of law.

### **914. Registrable dispositions by operation of law.**

The statutory provisions relating to registrable dispositions of a registered estate or charge<sup>1</sup> apply to dispositions by operation of law as they apply to other dispositions<sup>2</sup>, but with the exceptions of the following:

- 161 (1) a transfer on the death or bankruptcy of an individual proprietor<sup>3</sup>;
- 162 (2) a transfer on the dissolution of a corporate proprietor<sup>4</sup>; and
- 163 (3) the creation of a legal charge which is a local land charge<sup>5</sup>.

1 ie the Land Registration Act 2002 s 27: see PARAS 911-913 ante.

2 Ibid s 27(5). An application to register a disposition by operation of law which is a registrable disposition must be accompanied by sufficient evidence of the disposition: Land Registration Rules 2003, SI 2003/1417, r 161(1). However, where a vesting order has been made, it must accompany the application (r 161(2)); and where there is a vesting declaration to which the Trustee Act 1925 s 40 (as amended) (see TRUSTS vol 48 (2007 Reissue) PARAS 866-867) applies, the application must be accompanied by the deed of appointment or retirement, and by a certificate from the conveyancer acting for the persons making the appointment or effecting the retirement that they are entitled to do so, or other evidence to satisfy the Chief Land Registrar that the persons making the appointment or effecting the retirement are entitled to do so (Land Registration Rules 2003, SI 2003/1417, r 161(3)). As to the Chief Land Registrar see PARA 1066 post.

3 Land Registration Act 2002 s 27(5)(a). As to the death of an individual proprietor see the Land Registration Rules 2003, SI 2003/1417, rr 162-164; and PARA 921 post. As to the bankruptcy of an individual proprietor see rr 165-170; and PARA 922 post.

4 Land Registration Act 2002 s 27(5)(b). On the dissolution of a corporate proprietor, its property is deemed to be bona vacantia. As to bona vacantia see PARA 887 ante.

5 Land Registration Act 2002 s 27(5)(c). Local land charges are subject to a separate system of registration: see LAND CHARGES vol 26 (2004 Reissue) PARA 671 et seq.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(ii) Registration  
Requirements/915. Transfer of whole or part of registered estate.

## **(ii) Registration Requirements**

## 915. Transfer of whole or part of registered estate.

In the case of a transfer of whole or part of a registered estate<sup>1</sup>, the transferee, or his successor in title, must be entered in the register<sup>2</sup> as the proprietor<sup>3</sup>. In the case of a transfer of part of a registered estate, such details of the transfer as rules<sup>4</sup> may provide must be entered in the register in relation to the registered estate out of which the transfer is made<sup>5</sup>.

A transfer must be in the appropriate prescribed form<sup>6</sup>.

On a transfer or charge of part of the registered estate in a registered title<sup>7</sup>, the following entries must be made in the register of that registered title:

- 164 (1) an entry in the property register<sup>8</sup> referring to the removal of the estate comprised in the transfer or charge<sup>9</sup>;
- 165 (2) entries relating to any rights, covenants, provisions and other matters created by the transfer which the Chief Land Registrar<sup>10</sup> considers affect the retained registered estate<sup>11</sup>.

Instead of making the entry referred to in head (1) above, however, the registrar may make a new edition of the registered title out of which the transfer or charge is made and, if he considers it desirable, he may allot a new title number<sup>12</sup> to that registered title<sup>13</sup>.

On a transfer or charge of part of the registered estate in a registered title, entries must be made in the individual register<sup>14</sup> of the registered title comprising the part transferred or charged relating to any rights, covenants, provisions, and other matters created by the transfer or charge which the registrar considers affect the transferred or charged part<sup>15</sup>.

The provisions described above<sup>16</sup> only apply to a charge of part of a registered estate in a registered title if the registrar decides that the charged part will be comprised in a separate registered title from the uncharged part<sup>17</sup>.

1 For the meaning of 'registered estate' see PARA 861 note 3 ante.

2 As to the register of title see PARA 811 et seq ante.

3 Land Registration Act 2002 s 27(4), Sch 2 paras 1, 2(1). As to the effect of registration as the proprietor see PARA 910 ante.

4 As to land registration rules generally see PARA 1125 post.

5 Land Registration Act 2002 Sch 2 para 2(2).

6 Land Registration Rules 2003, SI 2003/1417, r 58. The prescribed forms are Sch 1 Form TP1, Form TP2, Form TP3, Form TR1, Form TR2, Form TR5, Form AS1 or Form AS3: see r 58. As to the use of forms generally see PARA 1087 et seq post.

Where any registered estate is transferred wholly or partly in consideration of a transfer of another estate, the transaction must be effected in one of the forms prescribed by r 58: r 59(1). A receipt for the equality money, if any, must be given in the receipt panel and the prescribed provision must be included in the additional provisions panel: r 59(2). As to such provision see r 59(2).

A transfer of a registered leasehold estate in land which contains a legal apportionment of or exoneration from the rent reserved by the lease must include the prescribed statement in the additional provisions panel, with any necessary alterations and additions: see r 60(1).

Where in a transfer of part of a registered leasehold estate which is held under an old tenancy that part is, without the consent of the lessor, expressed to be exonerated from the entire rent, and the covenants in the Land Registration Act 2002 s 134, Sch 12 para 20(4) (see PARA 974 post) are included, then Sch 12 para 20 applies as if: (1) the reference to the rent apportioned to the part retained were a reference to the entire rent, and (2) the covenants in Sch 12 para 20(4)(b), (c) extended to a covenant to pay the entire rent: see the Land Registration Rules 2003, SI 2003/1417, r 60(2).

Where in a transfer of part of a registered leasehold estate which is held under an old tenancy that part is, without the consent of the lessor, expressed to be subject to or charged with the entire rent, and the covenants in the Land Registration Act 2002 Sch 12 para 20(3) are included, that paragraph applies as if: (a) the reference in Sch 12 para 20(3)(a) to the rent apportioned to the part transferred were to the entire rent; and (b) the covenants in Sch 12 para 20(3)(b), (c) extended to a covenant to pay the entire rent: see the Land Registration Rules 2003, SI 2003/1417, r 60(3).

- 7 As to the meaning of 'registered title' see PARA 834 ante.
- 8 For the meaning of 'property register' see PARA 814 note 1 ante.
- 9 Land Registration Rules 2003, SI 2003/1417, r 72(1)(a).
- 10 As to the Chief Land Registrar see PARA 1066 post.
- 11 Land Registration Rules 2003, SI 2003/1417, r 72(1)(b).
- 12 As to the meaning of 'title number' see PARA 813 ante.
- 13 Land Registration Rules 2003, SI 2003/1417, r 72(3).
- 14 For the meaning of 'individual register' see PARA 812 note 3 ante.
- 15 Land Registration Rules 2003, SI 2003/1417, r 72(2).
- 16 *Ibid* r 72.
- 17 *Ibid* r 72(4).

## UPDATE

### 915 Transfer of whole or part of registered estate

NOTE 6--SI 2003/1417 r 58 amended: SI 2008/1919. SI 2003/1417 Sch 1 Forms TP1, TP2, TR1, TR2, TR5, AS1, AS3 substituted by SI 2008/1919; and amended by SI 2009/1996.

TEXT AND NOTES 7-17--SI 2003/1417 r 72 substituted: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(ii) Registration Requirements/916. Lease of estate in land.

### 916. Lease of estate in land.

In the case of a disposition consisting of the grant out of an estate in land<sup>1</sup> of a term of years absolute<sup>2</sup>, the grantee, or his successor in title, must be entered in the register<sup>3</sup> as the proprietor of the lease<sup>4</sup>, and a notice in respect of the lease must be entered in the register<sup>5</sup>.

- 1 As to the meaning of 'land' see PARA 826 note 4 ante.
- 2 Land Registration Act 2002 s 27(4), Sch 2 paras 1, 3(1). As to the meaning of 'term of years absolute' see PARA 827 note 15 ante.
- 3 As to the register of title see PARA 811 et seq ante.
- 4 Land Registration Act 2002 Sch 2 para 3(2)(a).
- 5 *Ibid* Sch 2 para 3(2)(b). See also s 38; and PARA 997 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(ii) Registration  
Requirements/917. Lease of franchise or manor.

### **917. Lease of franchise or manor.**

In the case of a disposition consisting of the grant out of a franchise or manor of a lease for a term of more than seven years<sup>1</sup> from the date of the grant<sup>2</sup>, the grantee, or his successor in title, must be entered in the register<sup>3</sup> as the proprietor of the lease<sup>4</sup>; and a notice in respect of the lease must be entered in the register of the grantor's title<sup>5</sup>.

In the case of a disposition consisting of the grant out of a franchise or manor of a lease for a term not exceeding seven years<sup>6</sup> from the date of the grant<sup>7</sup>, a notice in respect of the lease must be entered in the register of the grantor's title<sup>8</sup>.

1 The Lord Chancellor may by order substitute for the term specified in the text such shorter term as he thinks fit: Land Registration Act 2002 s 118(1)(g); and see PARA 826 note 6 ante. At the date at which this volume states the law, no such order had been made. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 Ibid s 27(4), Sch 2 paras 1, 4(1).

3 As to the register of title see PARA 811 et seq ante.

4 Land Registration Act 2002 Sch 2 para 4(2)(a).

5 Ibid Sch 2 para 4(2)(b). See also s 38; and PARA 997 post.

6 See note 1 supra.

7 Land Registration Act 2002 Sch 2 para 5(1).

8 Ibid Sch 2 para 5(2). An application to meet the registration requirements under Sch 2 para 5(2) must be made in the form prescribed in the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form AP1: r 90(a). As to the use of forms generally see PARA 1087 et seq post.

### **UPDATE**

### **917 Lease of franchise or manor**

NOTE 8--SI 2003/1417 Sch 1 substituted: SI 2008/1919. SI 2003/1417 Sch 1 Form AP1 amended: SI 2009/1996.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(ii) Registration  
Requirements/918. Creation of independently registrable legal interest.

### **918. Creation of independently registrable legal interest.**

In the case of a disposition consisting of the creation of a legal rentcharge or profit à prendre in gross<sup>1</sup>, other than one created for, or for an interest equivalent to, a term of years absolute not exceeding seven years<sup>2</sup> from the date of creation<sup>3</sup>, the grantee, or his successor in title, must

be entered in the register<sup>4</sup> as the proprietor of the interest created<sup>5</sup>; and a notice in respect of the interest created must be entered in the register of the grantor's title<sup>6</sup>.

1 The reference in the text to a legal rentcharge or profit à prendre in gross is a reference to one falling within the Law of Property Act 1925 s 1(2) (as amended) (see REAL PROPERTY vol 39(2) (Reissue) PARA 45); Land Registration Act 2002 s 27(4), Sch 2 para 6(3).

2 The Lord Chancellor may by order substitute for the term specified in the text such shorter term as he thinks fit: Land Registration Act 2002 s 118(1)(g); and see PARA 826 note 6 ante. At the date at which this volume states the law, no such order had been made. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 Ibid Sch 2 paras 1, 6(1).

4 As to the register of title see PARA 811 et seq ante.

5 Land Registration Act 2002 Sch 2 para 6(2)(a).

6 Ibid Sch 2 para 6(2)(b). See also s 38; and PARA 997 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(ii) Registration Requirements/919. Creation of other legal interest.

### **919. Creation of other legal interest.**

In the case of a disposition which consists of the creation of:

- 166 (1) an easement, right, or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute<sup>1</sup>;
- 167 (2) a rentcharge in possession issuing out of or charged on land being either perpetual or for a term of years absolute<sup>2</sup>; or
- 168 (3) a right of entry<sup>3</sup> exercisable over or in respect of a legal term of years absolute, or annexed, for any purpose, to a legal rentcharge<sup>4</sup>,

and which is not a disposition to which the registration requirements relating to leases of franchises or manors<sup>5</sup> or the creation of independently registrable legal interests<sup>6</sup> apply<sup>7</sup>, a notice in respect of the interest created must be entered in the register of the grantor's title<sup>8</sup>, and, if the interest is created for the benefit of a registered estate<sup>9</sup>, the proprietor of the registered estate must be entered in the register as its proprietor<sup>10</sup>.

Rules<sup>11</sup> may provide for these requirements to have effect with modifications in relation to a right of entry over or in respect of a term of years absolute<sup>12</sup>. Where a disposition creates such a right of entry, the Chief Land Registrar<sup>13</sup> need not make any entry regarding such right in the registered title<sup>14</sup> of the reversionary estate<sup>15</sup>.

1 The which consists of the creation of an interest of a kind falling within the Law of Property Act 1925 s 1(2) (a): see REAL PROPERTY vol 39(2) (Reissue) PARA 45. As to the meaning of 'land' see PARA 826 note 4 ante; and as to the meaning of 'term of years absolute' see PARA 827 note 15 ante.

2 The which consists of the creation of an interest of a kind falling within ibid s 1(2)(b): see REAL PROPERTY vol 39(2) (Reissue) PARA 45.

3 The which consists of the creation of an interest of a kind falling within ibid s 1(2)(e): see REAL PROPERTY vol 39(2) (Reissue) PARA 45.



- 4 Land Registration Act 2002 s 27(4), Sch 2 paras 1, 7(1)(a).
- 5 le the requirements of *ibid* Sch 2 para 4 or Sch 2 para 5: see PARA 917 ante.
- 6 le the requirements of *ibid* Sch 2 para 6: see PARA 918 ante.
- 7 *Ibid* Sch 2 para 7(1)(b).
- 8 *Ibid* Sch 2 para 7(2)(a). See also s 38; and PARA 997 post. As to the register of title see PARA 811 et seq ante. An application to meet the registration requirements under Sch 2 para 7(2)(a) must be made in the form prescribed in the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form AP1: r 90(a). As to the use of forms generally see PARA 1087 et seq post.
- 9 For the meaning of 'registered estate' see PARA 861 note 3 ante.
- 10 Land Registration Act 2002 Sch 2 para 7(2)(b).
- 11 As to land registration rules generally see PARA 1125 post.
- 12 Land Registration Act 2002 Sch 2 para 7(3).
- 13 As to the Chief Land Registrar see PARA 1066 post.
- 14 As to the meaning of 'registered title' see PARA 834 ante.
- 15 Land Registration Rules 2003, SI 2003/1417, r 77. Rule 77 reflects what was already current practice, but there was no previous statutory basis for the practice.

## UPDATE

### 919 Creation of other legal interest

NOTE 8--SI 2003/1417 Sch 1 substituted: SI 2008/1919.

TEXT AND NOTES 13-15--SI 2003/1417 r 77 substituted: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(ii) Registration  
Requirements/920. Creation of legal charge.

### 920. Creation of legal charge.

In the case of the creation of a charge<sup>1</sup>, the chargee, or his successor in title, must be entered in the register<sup>2</sup> as the proprietor of the charge<sup>3</sup>.

A legal charge of a registered estate<sup>4</sup> may be made in the prescribed form<sup>5</sup>.

- 1 For the meaning of 'charge' see PARA 861 note 5 ante.
- 2 As to the register of title see PARA 811 et seq ante.
- 3 Land Registration Act 2002 s 27(4), Sch 2 para 8. As to registered charges see further PARA 943 et seq post.
- 4 For the meaning of 'registered estate' see PARA 861 note 3 ante.
- 5 Land Registration Rules 2003, SI 2003/1417, r 103. As to the prescribed form see r 103, Sch 1 Form CH1: see r 103. As to the use of forms generally see PARA 1087 et seq post.

## UPDATE

## 920 Creation of legal charge

NOTE 5--SI 2003/1417 Sch 1 Form CH1 substituted by SI 2008/1919; and amended by SI 2009/1996.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(ii) Registration Requirements/921. Death of proprietor.

### 921. Death of proprietor.

An application to register<sup>1</sup> a transfer by a personal representative, who is not already registered as proprietor, must be accompanied by the original grant of probate or letters of administration showing him as the personal representative<sup>2</sup>. The Chief Land Registrar<sup>3</sup> is not under a duty to investigate the reasons a transfer of registered land<sup>4</sup> by a personal representative of a deceased sole proprietor or last surviving joint proprietor is made nor to consider the contents of the will and, provided the terms of any restriction on the register<sup>5</sup> are complied with, he must assume, whether he knows of the terms of the will or not, that the personal representative is acting correctly and within his powers<sup>6</sup>.

An application by a personal representative to become registered as proprietor of a registered estate<sup>7</sup> or registered charge<sup>8</sup>: (1) in place of a deceased sole proprietor or the last surviving joint proprietor<sup>9</sup>; or (2) jointly with another personal representative who is already so registered<sup>10</sup>; or (3) in place of another personal representative who is already registered as proprietor<sup>11</sup>, must be accompanied by the following evidence<sup>12</sup>:

- 169 (a) the original grant of probate or letters of administration of the deceased proprietor showing the applicant as his personal representative<sup>13</sup>; or
- 170 (b) a court order appointing the applicant as the deceased's personal representative<sup>14</sup>; or
- 171 (c) (where a conveyancer<sup>15</sup> is acting for the applicant) a certificate given by the conveyancer that he holds the original or an office copy of such grant of probate, letters of administration or court order<sup>16</sup>.

An application for alteration of the register by the removal from the register of the name of a deceased joint proprietor of a registered estate or registered charge must be accompanied by evidence of his death<sup>17</sup>.

- 1 As to applications for registration see PARA 830 et seq ante.
- 2 Land Registration Rules 2003, SI 2003/1417, r 162(1).
- 3 As to the Chief Land Registrar see PARA 1066 post.
- 4 As to the meaning of 'land' see PARA 826 note 4 ante.
- 5 As to the register of title see PARA 811 et seq ante.
- 6 Land Registration Rules 2003, SI 2003/1417, r 162(2).
- 7 For the meaning of 'registered estate' see PARA 861 note 3 ante.
- 8 For the meaning of 'registered charge' see PARA 861 note 8 ante.

9 Land Registration Rules 2003, SI 2003/1417, r 163(1)(a). When registering a personal representative of a deceased proprietor, the registrar must add the following after the personal representative's name: 'executor or executrix (or administrator or administratrix) of [name] deceased': r 163(4).

10 Ibid r 163(1)(b). Before registering another personal representative as a result of an application made under r 163(1)(b) the registrar must serve notice upon the personal representative who is registered as proprietor: r 163(5).

11 Ibid r 163(1)(c). However, an application under r 163(1)(c) must be accompanied by evidence to satisfy the registrar that the appointment of the personal representative whom the applicant is replacing has been terminated: r 163(3).

12 Ie as specified in ibid r 163(2). Rule 163(2) is subject to r 163(3) (see note 11 supra).

13 Ibid r 163(2)(a).

14 Ibid r 163(2)(b).

15 For the meaning of 'conveyancer' see PARA 832 note 4 ante.

16 Land Registration Rules 2003, SI 2003/1417, r 163(2)(c).

17 Ibid r 164.

## **UPDATE**

### **921 Death of proprietor**

TEXT AND NOTES--SI 2003/1417 rr 162, 163 amended: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(ii) Registration Requirements/922. Bankruptcy of proprietor.

### **922. Bankruptcy of proprietor.**

The bankruptcy notice<sup>1</sup> in relation to a registered estate<sup>2</sup> must be entered in the proprietorship register<sup>3</sup> of that registered estate and the bankruptcy notice in relation to a registered charge<sup>4</sup> must be entered in the charges register<sup>5</sup> in a specified form<sup>6</sup>. The registrar must give notice of the entry of a bankruptcy notice to the proprietor of the registered estate or registered charge to which it relates<sup>7</sup>.

The bankruptcy restriction<sup>8</sup> in relation to a registered estate must be entered in the proprietorship register and the bankruptcy restriction in relation to a registered charge must be entered in the charges register in a specified form<sup>9</sup>. The registrar must give notice of the entry of a bankruptcy restriction to the proprietor of the registered estate or registered charge to which it relates<sup>10</sup>.

Where the registrar is satisfied that: (1) the bankruptcy order has been annulled<sup>11</sup>; or (2) the bankruptcy petition has been dismissed or withdrawn with the court's permission<sup>12</sup>; or (3) the bankruptcy proceedings do not affect or have ceased to affect the registered estate or registered charge in relation to which a bankruptcy notice or bankruptcy restriction has been entered on the register<sup>13</sup>, he must as soon as practicable cancel any bankruptcy notice or bankruptcy restriction which relates to that bankruptcy order, to that bankruptcy petition or to those proceedings from the register<sup>14</sup>. Where it appears to the registrar that there is doubt as to whether the debtor or bankrupt is the same person as the proprietor of the registered estate or

registered charge in relation to which a bankruptcy notice or bankruptcy restriction has been entered, he must as soon as practicable take such action as he considers necessary to resolve the doubt<sup>15</sup>.

Where (a) a proprietor has had a bankruptcy order made against him<sup>16</sup>; or (b) an insolvency administration order<sup>17</sup> has been made in respect of a deceased proprietor<sup>18</sup>, and the bankrupt's or deceased's registered estate or registered charge has vested in the trustee in bankruptcy, the trustee may apply for the alteration of the register<sup>19</sup> by registering himself in place of the bankrupt or deceased proprietor<sup>20</sup>. The application must be supported, as appropriate, by: (i) the bankruptcy order relating to the bankrupt or the insolvency administration order relating to the deceased's estate<sup>21</sup>; and (ii) a certificate signed by the trustee that the registered estate or registered charge is comprised in the bankrupt's estate or deceased's estate<sup>22</sup>; and (iii) where the official receiver is the trustee, a certificate by him to that effect, and, where the trustee is another person, his certificate of appointment as trustee by the meeting of the bankrupt's or deceased debtor's creditors<sup>23</sup>; or his certificate of appointment as trustee by the Secretary of State<sup>24</sup>; or the order of the court appointing him trustee<sup>25</sup>.

Where (A) a trustee in bankruptcy, who has been registered as proprietor, vacates his office<sup>26</sup>; and (B) the official receiver<sup>27</sup> or some other person has been appointed the trustee of the relevant bankrupt's estate<sup>28</sup>; and (c) the official receiver or that person applies to be registered as proprietor in place of the former trustee<sup>29</sup>, the application referred to in head (c) above must be supported by the evidence required by head (iii) above<sup>30</sup>.

1 For the purposes of the Land Registration Rules 2003, SI 2003/1417, rr 165, 167, 'bankruptcy notice' means the notice which the Chief Land Registrar must enter in the register under the Land Registration Act 2002 s 86(2) (see PARA 1014 post): Land Registration Rules 2003, SI 2003/1417, rr 165(3), 167(3). As to the Chief Land Registrar see PARA 1066 post. As to the register of title see PARA 811 et seq ante.

2 For the meaning of 'registered estate' see PARA 861 note 3 ante.

3 For the meaning of 'proprietorship register' see PARA 815 note 1 ante.

4 For the meaning of 'registered charge' see PARA 861 note 8 ante.

5 For the meaning of 'charges register' see PARA 816 note 1 ante.

6 Land Registration Rules 2003, SI 2003/1417, r 165(1). The form is 'BANKRUPTCY NOTICE entered under section 86(2) of the Land Registration Act 2002 in respect of a pending action, as the title of the [proprietor of the registered estate] or [the proprietor of the charge dated . . . . referred to above] appears to be affected by a petition in bankruptcy against [*name of debtor*], presented in the [*name*] Court (Court Reference Number . . . .) (Land Charges Reference Number PA . . . .)'. see the Land Registration Rules 2003, SI 2003/1417, r 165(1).

7 Ibid r 165(2).

8 For the purposes of ibid rr 166, 167, 'bankruptcy restriction' means the restriction which the registrar must enter in the register under the Land Registration Act 2002 s 86(4) (see PARA 1014 post): Land Registration Rules 2003, SI 2003/1417, rr 166(3), 167(3).

9 Ibid r 166(1). The form is 'BANKRUPTCY RESTRICTION entered under section 86(4) of the Land Registration Act 2002, as the title of [the proprietor of the registered estate] or [the proprietor of the charge dated . . . . referred to above] appears to be affected by a bankruptcy order made by the [*name*] Court (Court Reference Number . . . .) against [*name of debtor*] (Land Charges Reference Number WO . . . .). [No disposition of the registered estate] or [No disposition of the charge] is to be registered until the trustee in bankruptcy of the property of the bankrupt is registered as proprietor of the [registered estate] or [charge]'. see the Land Registration Rules 2003, SI 2003/1417, r 166(1).

10 Ibid r 166(2).

11 Ibid r 167(1)(a).

12 Ibid r 167(1)(b).

13 Ibid r 167(1)(c).

- 14 Ibid r 167(1).
- 15 Ibid r 167(2).
- 16 Ibid r 168(1)(a).
- 17 For these purposes, 'insolvency administration order' has the same meaning as in the Insolvency Act 1986 s 385(1) (definition as added) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 825: Land Registration Rules 2003, SI 2003/1417, r 168(4).
- 18 Ibid r 168(1)(b).
- 19 As to alteration of the register see PARA 976 et seq post.
- 20 Land Registration Rules 2003, SI 2003/1417, r 168(1).
- 21 Ibid r 168(2)(a).
- 22 Ibid r 168(2)(b).
- 23 Ibid r 168(2)(c), (3)(a).
- 24 Ibid r 168(2)(c), (3)(b). In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1. As to the office of Secretary of State see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355.
- 25 Land Registration Rules 2003, SI 2003/1417, r 168(2)(c), (3)(c).
- 26 Ibid r 169(1)(a).
- 27 As to the official receiver see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 31 et seq. Where the official receiver or another trustee in bankruptcy is registered as proprietor, the words 'Official receiver and trustee in bankruptcy of [name]' or 'Trustee in bankruptcy of [name]' must be added to the register, as appropriate: ibid r 170.
- 28 Ibid r 169(1)(b).
- 29 Ibid r 169(1)(c).
- 30 Ibid r 169(2).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(ii) Registration  
Requirements/923. Overseas insolvency proceedings.

### **923. Overseas insolvency proceedings.**

A relevant person<sup>1</sup> may apply for a note of a judgment opening insolvency proceedings<sup>2</sup> to be entered in the register<sup>3</sup>. Such an application must be accompanied by such evidence as the Chief Land Registrar<sup>4</sup> may reasonably require<sup>5</sup>. Following such an application if the registrar is satisfied that the judgement opening insolvency proceedings has been made he may enter a note of the judgment in the register<sup>6</sup>.

1 'Relevant person' means any person or body authorised under the provisions of EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) art 22 to request or require an entry to be made in the register in respect of the judgment opening insolvency proceedings the subject of the application: Land Registration Rules 2003, SI 2003/1417, r 171(4).

2 'Judgment opening insolvency proceedings' means a judgment opening proceedings within the meaning of EC Council Regulation 1346/2000 (OJ L160, 30.6.2000, p 1) art 3(1): Land Registration Rules 2003, SI 2003/1417, r 171(4).

3 Ibid r 171(1). As to the register see PARA 811 et seq ante.

4 As to the Chief Land Registrar see PARA 1066 post.

5 Land Registration Rules 2003, SI 2003/1417, r 171(2).

6 Ibid r 171(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(ii) Registration Requirements/924. Church of England.

## 924. Church of England.

Where, by virtue of any Act or Measure<sup>1</sup>, a transfer to the Church Commissioners<sup>2</sup> has the effect (subject only to being completed by registration) of vesting any registered land<sup>3</sup> either immediately or at a subsequent time in an incumbent or any other ecclesiastical corporation sole<sup>4</sup>, the Chief Land Registrar<sup>5</sup> must register the incumbent or such other ecclesiastical corporation as proprietor upon receipt of: (1) an application<sup>6</sup>; (2) the transfer to the Church Commissioners<sup>7</sup>; and (3) a certificate by the Church Commissioners in the prescribed form<sup>8</sup>.

When any registered land is transferred to or (subject only to completion by registration) vested in the Church Commissioners, any ecclesiastical corporation<sup>9</sup>, aggregate or sole, or any other person, by: (a) a scheme of the Church Commissioners<sup>10</sup>; or (b) an instrument taking effect on publication in the London Gazette made pursuant to any Act or Measure relating to or administered by the Church Commissioners<sup>11</sup>; or (c) any transfer authorised by any such Act or Measure<sup>12</sup>, the registrar must, on application, register the Church Commissioners, such ecclesiastical corporation or such other person as proprietor<sup>13</sup>. Such an application must be accompanied by: (i) a certificate by the Church Commissioners in the prescribed form<sup>14</sup>; and (ii) a copy of the London Gazette publishing the instrument or the transfer (if any)<sup>15</sup>.

1 For the purposes of the Land Registration Rules 2003, SI 2003/1417, rr 174, 177, 'Measure' means a Measure of the National Assembly of the Church of England or of the General Synod of the Church of England: rr 174(3), 175(4). As to the Church of England generally see ECCLESIASTICAL LAW.

2 As to the Church Commissioners see ECCLESIASTICAL LAW vol 14 para 363 et seq.

3 As to the meaning of 'land' see PARA 826 note 4 ante.

4 As to corporations sole see CORPORATIONS vol 9(2) (2006 Reissue) PARAS 1111-1112.

5 As to the Chief Land Registrar see PARA 1066 post.

6 Land Registration Rules 2003, SI 2003/1417, r 174(1)(a).

7 Ibid r 174(1)(b).

8 Ibid r 174(1)(c). As to the prescribed form see Sch 1 Form 4. Such a certificate may be given either in the transfer or in a separate document: r 174(2). As to the use of forms generally see PARA 1087 et seq post.

9 As to ecclesiastical corporations and ecclesiastical corporations aggregate see ECCLESIASTICAL LAW vol 14 paras 1253, 1255.

10 Land Registration Rules 2003, SI 2003/1417, r 175(1)(a).

11 Ibid r 175(1)(b).

12 Ibid r 175(1)(c).

13 Ibid r 175(1).

14 Ibid r 175(2)(a). As to the prescribed form see Sch 1 Form 5. Such certificate may be given either in the transfer or in a separate document: r 175(3).

15 Ibid r 175(2)(b).

## UPDATE

### 924 Church of England

TEXT AND NOTE 15--SI 2003/1417 r 175(2)(b) substituted: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(ii) Registration  
Requirements/925. Companies and other corporations.

### 925. Companies and other corporations.

Where a company registered under the Companies Acts<sup>1</sup> applies to be registered as proprietor of a registered estate<sup>2</sup> or of a registered charge<sup>3</sup>, the application<sup>4</sup> must state the company's registered number<sup>5</sup>. If the company is a registered social landlord within the meaning of the Housing Act 1996<sup>6</sup>, the application must also contain or be accompanied by a certificate to that effect<sup>7</sup>. If the company is an unregistered housing association within the meaning of the Housing Associations Act 1985<sup>8</sup> and the application relates to grant-aided land<sup>9</sup>, the application must also contain or be accompanied by a certificate to that effect<sup>10</sup>. Where a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000<sup>11</sup> applies to be registered as proprietor of a registered estate or of a registered charge, the application must state the limited liability partnership's registered number<sup>12</sup>.

Where a corporation or body of trustees holding on charitable, ecclesiastical or public trusts<sup>13</sup> applies to be registered as proprietor of a registered estate or registered charge, the application must be accompanied by the document creating the trust<sup>14</sup>. If the registered estate or registered charge to which the application relates is held on trust for a registered social landlord within the meaning of the Housing Act 1996, the application must also contain or be accompanied by a certificate to that effect<sup>15</sup>. If the registered estate or registered charge to which the application relates is held on trust for an unregistered housing association within the meaning of the Housing Associations Act 1985 and is grant-aided land<sup>16</sup>, the application must also contain or be accompanied by a certificate to that effect<sup>17</sup>.

Where a corporation aggregate<sup>18</sup> makes an application to be registered as proprietor of a registered estate or registered charge, the application must also be accompanied by evidence of the extent of its powers to hold and sell, mortgage, lease and otherwise deal with land and, in the case of a charge, to lend money on mortgage<sup>19</sup>. The evidence must include the charter, statute, rules, memorandum and articles of association or other documents constituting the corporation, together with such further evidence as the Chief Land Registrar<sup>20</sup> may require<sup>21</sup>. If the corporation is a registered social landlord within the meaning of the Housing Act 1996, the application must contain or be accompanied by a certificate to that effect<sup>22</sup>. If the corporation is an unregistered housing association within the meaning of the Housing Associations Act 1985 and the application relates to grant-aided land<sup>23</sup>, the application must contain or be accompanied by a certificate to that effect<sup>24</sup>.

Where a company which is the registered proprietor of a registered estate or registered charge enters administration under the Insolvency Act 1986<sup>25</sup> upon the application of the company's administrator, supported by the order or the notice of appointment, the registrar must make an entry in the individual register<sup>26</sup> of the relevant registered title as to the making of the order or the notice of appointment and the appointment of the administrator<sup>27</sup>. Where a company which is the registered proprietor of a registered estate or registered charge is in liquidation<sup>28</sup> upon the application of the company's liquidator, the registrar must make an entry in the individual register of the relevant registered title as to the appointment of the liquidator<sup>29</sup>. Such an application must be supported by the order, appointment by the Secretary of State or resolution under which the liquidator was appointed and such other evidence as the registrar may require<sup>30</sup>.

Where a corporation shown in an individual register as the proprietor of the registered estate or of a registered charge has been dissolved, the registrar may enter a note of that fact in the proprietorship register<sup>31</sup> or in the charges register<sup>32</sup>, as appropriate<sup>33</sup>.

1 As to companies registered under the Companies Acts see COMPANIES. For the meaning of 'the Companies Acts' see PARA 815 note 4 ante.

2 For the meaning of 'registered estate' see PARA 861 note 8 ante.

3 For the meaning of 'registered charge' see PARA 861 note 3 ante.

4 As to applications generally see PARA 1075 et seq post.

5 Land Registration Rules 2003, SI 2003/1417, r 181(1).

6 As to registered social landlords under the Housing Act 1996 see HOUSING vol 22 (2006 Reissue) PARA 66 et seq.

7 Land Registration Rules 2003, SI 2003/1417, r 181(2).

8 As to unregistered housing associations under the Housing Associations Act 1985 see HOUSING vol 22 (2006 Reissue) PARAS 43, 61.

9 le as defined in ibid ss 6, 9, Sch 1 (definition as amended) (see HOUSING vol 22 (2006 Reissue) PARA 43).

10 Land Registration Rules 2003, SI 2003/1417, r 181(3).

11 As to limited liability partnerships under the Limited Liability Partnerships Act 2000 see PARTNERSHIP vol 79 (2008) PARA 234 et seq.

12 Land Registration Rules 2003, SI 2003/1417, r 181(4).

13 As to charitable, ecclesiastical and public trusts see CHARITIES; ECCLESIASTICAL LAW; TRUSTS.

14 Land Registration Rules 2003, SI 2003/1417, r 182(1). However r 182(1) does not apply in the case of a registered estate or a registered charge held by or in trust for a non-exempt charity: r 182(4).

15 Ibid r 182(2).

16 See note 9 supra.

17 Land Registration Rules 2003, SI 2003/1417, r 182(3).

18 The corporation aggregate is one to which ibid rr 181-182 do not apply: see r 183(1). As to the meaning of 'corporation aggregate' see CORPORATIONS vol 9(2) (2006 Reissue) PARA 1109.

19 Ibid r 183(1).

20 As to the Chief Land Registrar see PARA 1066 post.

21 Land Registration Rules 2003, SI 2003/1417, r 183(2).



- 22 Ibid r 183(3).
- 23 See note 9 *supra*.
- 24 Land Registration Rules 2003, SI 2003/1417, r 183(4).
- 25 Ibid r 184(1) (amended by SI 2003/2096).
- 26 For the meaning of 'individual register' see PARA 812 note 3 *ante*.
- 27 Land Registration Rules 2003, SI 2003/1417, r 184(2) (amended by SI 2003/2096).
- 28 Land Registration Rules 2003, SI 2003/1417, r 184(3).
- 29 Ibid r 184(4).
- 30 Ibid r 184(5). As to the Secretary of State see PARA 922 note 24 *ante*.
- 31 For the meaning of 'proprietorship register' see PARA 815 note 1 *ante*.
- 32 For the meaning of 'charges register' see PARA 816 note 1 *ante*.
- 33 Land Registration Rules 2003, SI 2003/1417, r 185.

## UPDATE

### 925 Companies and other corporations

TEXT AND NOTES 1-12--SI 2003/1417 r 181 revoked: SI 2008/1919.

NOTES 6, 7--If an applicant for registration as proprietor of a registered estate or a registered charge is, or holds on trust for, a registered social landlord within the meaning of the Housing Act 1996, the application must include a certificate to that effect: SI 2003/1417 r 183A(1) (added by SI 2008/1919).

TEXT AND NOTES 13-17--SI 2003/1417 r 182 amended: SI 2008/1919.

TEXT AND NOTES 18-24--SI 2003/1417 r 183 substituted: SI 2008/1919.

NOTES 23, 24--If an applicant for registration as proprietor of a registered estate or a registered charge is, or holds on trust for, an unregistered housing association within the meaning of the Housing Associations Act 1985 and the application relates to grant-aided land as defined in the Housing Associations Act 1985 Sch 1, the application must include a certificate to that effect: SI 2003/1417 r 183A(2) (added by SI 2008/1919).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(ii) Registration Requirements/926. Miscellaneous entries in the register.

### 926. Miscellaneous entries in the register.

A proprietor of a registered estate<sup>1</sup> who claims the benefit of a legal easement or profit à prendre which has been expressly granted over an unregistered legal estate<sup>2</sup> may apply for it to be registered as appurtenant to his estate<sup>3</sup>. The application must be accompanied by the grant and evidence of the grantor's title to the unregistered estate<sup>4</sup>.

A proprietor of a registered estate who claims the benefit of a legal easement or profit à prendre, which has been acquired otherwise than by express grant, may apply for it to be registered as appurtenant to his estate<sup>5</sup>. The application must be accompanied by evidence to

satisfy the Chief Land Registrar<sup>6</sup> that the right subsists as a legal estate appurtenant to the applicant's registered estate<sup>7</sup>.

Where a proprietor of a registered estate makes an application<sup>8</sup> and the registrar is not satisfied that the right claimed subsists as a legal estate appurtenant to the applicant's registered estate<sup>9</sup>, the registrar may enter details of the right claimed in the property register<sup>10</sup> with such qualification as he considers appropriate<sup>11</sup>.

If it appears to the registrar that an agreement prevents the acquisition of rights of light or air for the benefit of the registered estate, he may make an entry in the property register of that estate<sup>12</sup>.

An application to register the variation of a lease or other disposition of a registered estate or a registered charge<sup>13</sup> which has been completed by registration must be accompanied by the instrument (if any) effecting the variation and evidence to satisfy the registrar that the variation has effect at law<sup>14</sup>.

1 For the meaning of 'registered estate' see PARA 861 note 3 ante.

2 For the meaning of 'legal estate' see PARA 823 note 2 ante.

3 Land Registration Rules 2003, SI 2003/1417, r 73(1). In r 73(1) the reference to express grant does not include a grant as a result of the operation of the Law of Property Act 1925 s 62 (see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 236; EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) PARA 57): Land Registration Rules 2003, SI 2003/1417, r 73(3). As to easements and profits à prendre generally see EASEMENTS AND PROFITS A PRENDRE.

4 Ibid r 73(2).

5 Ibid r 74(1). In r 74(1) the reference to an acquisition otherwise than by express grant includes acquired as a result of the operation of the Law of Property Act 1925 s 62 (see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 236; EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) PARA 57): Land Registration Rules 2003, SI 2003/1417, r 74(3).

6 As to the Chief Land Registrar see PARA 1066 post.

7 Land Registration Rules 2003, SI 2003/1417, r 74(2).

8 ie an application under ibid r 73 or r 74.

9 Ibid r 75(1).

10 For the meaning of 'property register' see PARA 814 note 1 ante.

11 Land Registration Rules 2003, SI 2003/1417, r 75(2).

12 Ibid r 76.

13 For the meaning of 'registered charge' see PARA 861 note 8 ante.

14 Land Registration Rules 2003, SI 2003/1417, r 78.

## UPDATE

### 926 Miscellaneous entries in the register

TEXT AND NOTES 1-11--SI 2003/1417 r 73A substituted for rr 73-75: SI 2008/1919.

TEXT AND NOTES 13, 14--SI 2003/1417 r 78 revoked: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(ii) Registration  
Requirements/927. Transfer of registered charge.

### **927. Transfer of registered charge.**

In the case of a registrable transfer of a registered charge<sup>1</sup>, the transferee, or his successor in title, must be entered in the register<sup>2</sup> as the proprietor of the charge<sup>3</sup>.

A transfer of a registered charge must be in the prescribed form<sup>4</sup>.

1 As to registrable dispositions of registered charges see PARA 913 ante; and for the meaning of 'registered charge' see PARA 861 note 8 ante.

2 As to the register of title see PARA 811 et seq ante.

3 Land Registration Act 2002 s 27(4), Sch 2 paras 9, 10.

4 Land Registration Rules 2003, SI 2003/1417, r 116. The prescribed form is Sch 1 Form TR3, Form TR4 or Form AS2, as appropriate: see r 116. As to the use of forms generally see PARA 1087 et seq post.

### **UPDATE**

### **927 Transfer of registered charge**

TEXT AND NOTES--The registrar may, on application, make an entry in an individual register referring to an agreement which it is claimed relates to priorities between a registered charge and a charge which is the subject of a notice in the same individual register: SI 2003/1417 116A (added by SI 2008/1919).

NOTE 4--SI 2003/1417 r 116 amended: SI 2008/1919. SI 2003/1417 Sch 1 Forms TR4, AS2 substituted by SI 2008/1919; and amended by SI 2009/1996.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(ii) Registration  
Requirements/928. Creation of sub-charge.

### **928. Creation of sub-charge.**

In the case of the creation of a registrable sub-charge<sup>1</sup>, the sub-chargee, or his successor in title, must be entered in the register<sup>2</sup> as the proprietor of the sub-charge<sup>3</sup>.

1 As to registrable dispositions of registered charges see PARA 913 ante; and for the meaning of 'sub-charge' see PARA 861 note 7 ante.

2 As to the register of title see PARA 811 et seq ante.

3 Land Registration Act 2002 s 27(4), Sch 2 paras 9, 11.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(iii) Registration/929.  
Introduction.

### **(iii) Registration**

#### **929. Introduction.**

The general provisions with regard to applications for registration<sup>1</sup>, objections to applications<sup>2</sup> and the correction of mistakes in applications and accompanying documents<sup>3</sup>, are dealt with elsewhere in this title. There are, however, specific provisions with regard to applications in connection with registered land<sup>4</sup>.

1 See PARAS 1075-1080 post.

2 See PARA 1081 post.

3 See PARA 1082 post.

4 See PARA 930 et seq post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(iii) Registration/930.  
Outline applications.

#### **930. Outline applications.**

An outline application is an application delivered in accordance with the provisions described below<sup>1</sup>. Subject to the prescribed procedure for notices for the provision of additional arrangements for applications<sup>2</sup>, any application may be delivered by outline application if it satisfies the following conditions:

- 172 (1) the application must not be an application:
  - 15 28. (a) which can be protected by an official search with priority<sup>3</sup>;
  29. (b) for first registration of land<sup>4</sup>;
  30. (c) for a caution against first registration or in respect of the cautions register<sup>5</sup>;
  31. (d) dealing with part only of land in a registered title<sup>6</sup>, whether or not also involving other registered land<sup>7</sup>;
  32. (e) made under the rules<sup>8</sup> about information and inspection of the register and Land Registry documents<sup>9</sup>; and
- 16 173 (2) the right, interest or matter the subject of the application must exist at the time the application is made<sup>10</sup>.

During the currency of any relevant notice<sup>11</sup> and subject to and in accordance with the limitations contained in that notice, an outline application may be delivered by an oral application<sup>12</sup>, by telephone<sup>13</sup> or by electronic means<sup>14</sup>. An outline application must contain the prescribed particulars<sup>15</sup> when made<sup>16</sup>.

Every outline application must be allocated an official reference number and must be identified on the day list<sup>17</sup> as such and marked with the date and time at which the application is taken as made<sup>18</sup>. The Chief Land Registrar<sup>19</sup> must acknowledge receipt of any outline application by notifying the applicant, as soon as practicable, of the official reference number allocated to it<sup>20</sup>.

Without prejudice to the registrar's power to cancel an application which is not in order<sup>21</sup>, the outline application must be cancelled by the registrar unless there is delivered at the appropriate office<sup>22</sup> before the expiry of the reserved period<sup>23</sup> the relevant prescribed application form<sup>24</sup> duly completed in respect of the outline application, quoting the official reference number of the outline application and accompanied by the appropriate documentation and the prescribed fee<sup>25</sup>. If the outline application has been cancelled before that form is delivered at the appropriate office, the registrar must accept the form as an application in its own right<sup>26</sup>.

1 Land Registration Rules 2003, SI 2003/1417, r 54(1).

2 Ie subject to *ibid* Sch 2: see PARA 1077 post.

3 Ie an official search with priority within the meaning of *ibid* r 148 (see PARA 1113 ante): r 54(2)(a)(i).

4 *Ibid* r 54(2)(a)(ii). As to first registration see PARA 826 et seq ante.

5 *Ibid* r 54(2)(a)(iii). As to cautions against first registration see PARA 854 et seq ante; and for the meaning of 'cautions register' see PARA 852 note 2 ante.

6 As to the meaning of 'registered title' see PARA 834 ante.

7 Land Registration Rules 2003, SI 2003/1417, r 54(2)(a)(iv).

8 Ie made under *ibid* Pt 13 (rr 131-160): see PARA 1095 et seq ante.

9 *Ibid* r 54(2)(a)(v). As to the Land Registry see PARA 1064 et seq post.

10 *Ibid* r 54(2)(b).

11 Ie any notice given under *ibid* Sch 2 (see PARA 915 et seq ante): r 54(3).

12 *Ibid* r 54(3)(a).

13 *Ibid* r 54(3)(b).

14 *Ibid* r 54(3)(c).

15 The particulars prescribed for these purposes are: (1) the title number(s) affected; (2) if there is only one proprietor for first registration and that person is an individual, his surname, or otherwise the proprietor's or such applicant's full name or the full name of one of the proprietors or such applicants, as appropriate; (3) the nature of the application; (4) the name of the applicant; (5) the name and address of the person or firm lodging the application; and (6) any other particulars specified in any notice made under Sch 2 (see PARA 915 et seq ante): r 54(4). As to the meaning of 'title number' see PARA 813.

16 *Ibid* r 54(4).

17 For the meaning of 'day list' see PARA 820 ante.

18 Land Registration Rules 2003, SI 2003/1417, r 54(5). As to when an application is taken as made see r 15; and PARA 1078 post.

19 As to the Chief Land Registrar see PARA 1066 post.

20 See note 18 supra.

21 Ie the power under the Land Registration Rules 2003, SI 2003/1417, r 16 (see PARA 1079 post): see r 54(6).

22 For these purposes, the 'appropriate office' is the same office as the proper office, designated under an order under the Land Registration Act 2002 s 100(3) (see PARA 1069 post), for the receipt of an application relating to the land in respect of which the outline application is made, but on the assumption that if the order contains exceptions none of the exceptions apply to the application: Land Registration Rules 2003, SI 2003/1417, r 54(8).

23 For these purposes, 'reserved period' means the period expiring at 12 noon on the fourth business day following the day that the outline application was taken as made: *ibid* r 54(9). For the meaning of 'business day' see PARA 847 note 9 ante. As to the substituted period where there has been a notice under r 216(2) see PARA 1065 post.

24 As to the use of prescribed forms generally see PARA 1087 et seq post. See also PARA 1076 post.

25 Land Registration Rules 2003, SI 2003/1417, r 54(6). As to Land Registry fees see PARA 1071 post.

26 *Ibid* r 54(7).

## UPDATE

### 930 Outline applications

TEXT AND NOTES 21-25--SI 2003/1417 r 54(6), (8) substituted: SI 2008/1919.

TEXT AND NOTE 26--SI 2003/1417 r 54(7) amended: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(iii) Registration/931.  
Priority of applications.

### 931. Priority of applications.

Where two or more applications relating to a particular registered title<sup>1</sup> are taken<sup>2</sup> as having been made at the same time, the order in which, as between each other, they will rank in priority must be determined as follows<sup>3</sup>.

Where the applications are made by the same applicant, they will rank in such order as he may specify<sup>4</sup>.

Where the applications are not made by the same applicant, they will rank in such order as the applicants may specify that they have agreed<sup>5</sup>. Where, however, they have not specified the agreed order of priority, the Chief Land Registrar<sup>6</sup> must notify the applicants that their applications are regarded as having been delivered at the same time and request them to agree, within a specified time<sup>7</sup>, their order of priority<sup>8</sup>. Where the parties fail within the time specified by the registrar to indicate the order of priority of their applications the registrar must propose the order of priority and serve notice on the applicants of his proposal<sup>9</sup>. Any notice so served must draw attention to the right of any applicant who does not agree with the registrar's proposal to object<sup>10</sup> to another applicant's application<sup>11</sup>.

Where one transaction is dependent upon another the registrar must assume, unless the contrary appears, that the applicants have specified that the applications are to have priority so as to give effect to the sequence of the documents effecting the transactions<sup>12</sup>.

1 As to the meaning of 'registered title' see PARA 834 ante.

2 *Ie* under the provisions of the Land Registration Rules 2003, SI 2003/1417, r 15 (see PARA 1078 post): see r 55(1).

3 *Ibid* r 55(1).

4 *Ibid* r 55(2).

5 *Ibid* r 55(3).

6 As to the Chief Land Registrar see PARA 1066 post.

7 The being not less than 15 business days: see the Land Registration Rules 2003, SI 2003/1417, r 55(4). For the meaning of 'business day' see PARA 847 note 9 ante. As to the substituted period where there has been a notice under r 216(2) see PARA 1065 post.

8 Ibid r 55(4).

9 Ibid r 55(5). As to service of notice see PARA 1130 post.

10 The under the Land Registration Act 2002 s 73 (see PARA 1081 post): see the Land Registration Rules 2003, SI 2003/1417, r 55(6). The right to object must be exercised reasonably: see the Land Registration Act 2002 s 77(1)(c); and PARA 1081 post.

11 Land Registration Rules 2003, SI 2003/1417, r 55(6).

12 Ibid r 55(7).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(iii) Registration/932.  
Dispositions affecting two or more registered titles.

### **932. Dispositions affecting two or more registered titles.**

A disposition affecting two or more registered titles<sup>1</sup> may, on the written request of the applicant, be registered as to some or only one of the registered titles<sup>2</sup>. The applicant may later apply to have the disposition registered as to any of the other registered titles affected by it<sup>3</sup>.

1 As to the meaning of 'registered title' see PARA 834 ante.

2 Land Registration Rules 2003, SI 2003/1417, r 56(1).

3 Ibid r 56(2).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(iii) Registration/933.  
Duty to disclose unregistered interests that override registered dispositions.

### **933. Duty to disclose unregistered interests that override registered dispositions.**

A person applying to register<sup>1</sup> a registrable disposition<sup>2</sup> of a registered estate<sup>3</sup> must provide in the prescribed form<sup>4</sup> information to the Chief Land Registrar<sup>5</sup> about any of the unregistered interests that override registered dispositions<sup>6</sup> that: (1) are within the actual knowledge of the applicant<sup>7</sup>; and (2) affect the estate to which the application relates<sup>8</sup>. The applicant must produce to the registrar any documentary evidence of the existence of a disclosable overriding interest<sup>9</sup> that is under his control<sup>10</sup>. Where the applicant provides information about such an interest, the registrar may enter a notice in the register in respect of that interest<sup>11</sup>. However, the applicant is not required to provide information about interests that cannot<sup>12</sup> be protected by notice<sup>13</sup>. Nor is he required to provide information about a public right<sup>14</sup>, a local land charge<sup>15</sup>, or certain leasehold estates in land<sup>16</sup>.

1 As to the register of title see PARA 811 et seq ante.

- 2 As to registrable dispositions see PARA 911 et seq ante.
- 3 For the meaning of 'registered estate' see PARA 861 note 3 ante.
- 4 As to the prescribed form see the Land Registration Rules 2003, SI 2003/1417, r 57(1), Form D1. As to the use of forms generally see PARA 1087 et seq post.
- 5 As to the Chief Land Registrar see PARA 1066 post.
- 6 Ie any of the interests that fall within the Land Registration Act 2002 ss 29(2)(a)(ii), 30(2)(a)(ii), Sch 3: see PARA 962 post.
- 7 Land Registration Rules 2003, SI 2003/1417, r 57(1)(a).
- 8 Ibid r 57(1)(b).
- 9 'Disclosable overriding interest' is an interest that the applicant must provide information about under ibid r 57(1): r 57(3).
- 10 Ibid r 57(4).
- 11 Ibid r 57(5). As to notices see PARA 995 et seq post.
- 12 Ie interests that cannot be protected under the Land Registration Act 2002 s 33 (see PARA 996 post) or s 90(4) (see PARA 996 post): see the Land Registration Rules 2003, SI 2003/1417, r 57(2)(a).
- 13 Ibid r 57(2)(a).
- 14 Ibid r 57(2)(b).
- 15 Ibid r 57(2)(c). Local land charges are subject to a separate system of registration: see LAND CHARGES vol 26 (2004 Reissue) PARA 671 et seq.
- 16 Ibid r 57(2)(d). The reference in the text is a reference to a leasehold estate in land if it is within the Land Registration Act 2002 Sch 3 para 1 (see PARA 962 post) and, at the time of the application, the term granted by the lease has one year or less to run: see the Land Registration Rules 2003, SI 2003/1417, r 57(2)(d).

## UPDATE

### **933 Duty to disclose unregistered interests that override registered dispositions**

TEXT AND NOTES--SI 2003/1417 r 57 does not apply to a person applying to register an electronic legal charge: SI 2008/1750.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(iv) Effect of Registered Dispositions/A. EFFECT ON PRIORITY/934. Effect of dispositions on priority; the basic rule.

## **(iv) Effect of Registered Dispositions**

### **A. EFFECT ON PRIORITY**

#### **934. Effect of dispositions on priority; the basic rule.**

Except as otherwise provided<sup>1</sup>, the priority of an interest affecting a registered estate<sup>2</sup> or charge<sup>3</sup> is not affected by a disposition of the estate or charge<sup>4</sup>. For these purposes, it makes no difference whether the interest or disposition is registered<sup>5</sup>.



1 le except as provided by the Land Registration Act 2002 s 29 (see PARA 935 post) or s 30 (see PARA 936 post): s 28(1).

2 For the meaning of 'registered estate' see PARA 861 note 3 ante.

3 For the meaning of 'registered charge' see PARA 861 note 8 ante.

4 Land Registration Act 2002 s 28(1).

5 Ibid s 28(2). As to dispositions required to be registered see PARA 911 et seq ante.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(iv) Effect of Registered Dispositions/A. EFFECT ON PRIORITY/935. Effect of registered dispositions of registered estates.

### **935. Effect of registered dispositions of registered estates.**

If a registrable disposition<sup>1</sup> of a registered estate<sup>2</sup> is made for valuable consideration<sup>3</sup>, completion of the disposition by registration<sup>4</sup> has the effect of postponing to the interest under the disposition any interest affecting the estate immediately before the disposition whose priority is not protected at the time of registration<sup>5</sup>. For these purposes, the priority of an interest is protected in any case if the interest:

174 (1) is a registered charge<sup>6</sup> or the subject of a notice in the register<sup>7</sup>;

175 (2) falls within any of the categories of unregistered interests<sup>8</sup> which override registered dispositions<sup>9</sup>, unless it has been the subject of a notice in the register at any time since 13 October 2003<sup>10</sup>; or

176 (3) appears from the register to be excepted from the effect of registration<sup>11</sup>.

In the case of a disposition of a leasehold estate, the priority of an interest is also protected if the burden of the interest is incident to the estate<sup>12</sup>.

Where the grant of a leasehold estate in land<sup>13</sup> out of a registered estate does not involve a registrable disposition, these provisions have effect as if the grant involved such a disposition<sup>14</sup> and the disposition were registered at the time of the grant<sup>15</sup>.

1 As to registrable dispositions see PARA 911 et seq ante.

2 For the meaning of 'registered estate' see PARA 861 note 3 ante.

3 As to the meaning of 'valuable consideration' see PARA 827 note 7 ante.

4 As to registration requirements see PARA 826 et seq ante.

5 Land Registration Act 2002 s 29(1).

6 For the meaning of 'registered charge' see PARA 861 note 8 ante.

7 Land Registration Act 2002 s 29(2)(a)(i). As to the register of title see PARA 811 et seq ante.

8 le falls within any of the paragraphs of ibid ss 29(2)(a)(ii), 30(2)(a)(ii), Sch 3: see PARA 962 post.

9 Ibid s 29(2)(a)(ii).

10 Ibid s 29(3). The date mentioned in the text is the date when the Land Registration Act 2002 s 29 came into force: see PARA 805 note 1 ante.

- 11 Ibid s 29(2)(a)(iii).
- 12 Ibid s 29(2)(b).
- 13 As to the meaning of 'land' see PARA 826 note 4 ante.
- 14 Land Registration Act 2002 s 29(4)(a).
- 15 Ibid s 29(4)(b).

## UPDATE

### 935 Effect of registered dispositions of registered estates

TEXT AND NOTES 6-9--As to the application of the Land Registration Act 2002 s 29(2)(a) to franchises see the Land Registration Rules 2003, SI 2003/1417, r 196B(2) (added by SI 2008/1919).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(iv) Effect of Registered Dispositions/A. EFFECT ON PRIORITY/936. Effect of registered dispositions of registered charges.

### 936. Effect of registered dispositions of registered charges.

If a registrable disposition<sup>1</sup> of a registered charge<sup>2</sup> is made for valuable consideration<sup>3</sup>, completion of the disposition by registration<sup>4</sup> has the effect of postponing to the interest under the disposition any interest affecting the charge immediately before the disposition whose priority is not protected at the time of registration<sup>5</sup>. For these purposes, the priority of an interest is protected in any case, if the interest:

- 177 (1) is a registered charge or the subject of a notice in the register<sup>6</sup>;
- 178 (2) falls within any of the categories of unregistered interests<sup>7</sup> which override registered dispositions<sup>8</sup>, unless it has been the subject of a notice in the register at any time since 13 October 2003<sup>9</sup>; or
- 179 (3) appears from the register to be excepted from the effect of registration<sup>10</sup>.

In the case of a disposition of a charge which relates to a leasehold estate, the priority of an interest is also protected if the burden of the interest is incident to the estate<sup>11</sup>.

- 1 As to registrable dispositions see PARA 911 et seq ante.
- 2 For the meaning of 'registered charge' see PARA 861 note 8 ante.
- 3 As to the meaning of 'valuable consideration' see PARA 827 note 7 ante.
- 4 As to the registration requirements see PARA 826 et seq ante.
- 5 Land Registration Act 2002 s 30(1).
- 6 Ibid s 30(2)(a)(i). As to the register of title see PARA 811 et seq ante.
- 7 ie falls within any of the paragraphs of ibid ss 29(2)(a)(ii), 30(2)(a)(ii), Sch 3: see PARA 962 post.

8 Ibid s 30(2)(a)(ii).

9 Ibid s 30(3). The date mentioned in the text is the date when s 30 came into force: see PARA 805 note 1 ante.

10 Ibid s 30(2)(a)(iii).

11 Ibid s 30(2)(b).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(iv) Effect of Registered Dispositions/A. EFFECT ON PRIORITY/937. Notice of trust.

### **937. Notice of trust.**

The Chief Land Registrar<sup>1</sup> is not to be affected with notice of a trust<sup>2</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 Land Registration Act 2002 s 78. As to trusts generally see TRUSTS.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(iv) Effect of Registered Dispositions/A. EFFECT ON PRIORITY/938. Effect of dispositions on Inland Revenue charges for unpaid inheritance tax.

### **938. Effect of dispositions on Inland Revenue charges for unpaid inheritance tax.**

The effect of a disposition of a registered estate<sup>1</sup> or charge<sup>2</sup> on an Inland Revenue charge for unpaid inheritance tax<sup>3</sup> is to be determined, not in accordance with the provisions of the Land Registration Act 2002<sup>4</sup>, but in accordance with the provisions of the Inheritance Tax Act 1984<sup>5</sup> under which a purchaser in good faith for money or money's worth takes free from the charge in the absence of registration<sup>6</sup>.

1 For the meaning of 'registered estate' see PARA 861 note 3 ante.

2 For the meaning of 'registered charge' see PARA 861 note 8 ante.

3 Ie a charge under the Inheritance Tax Act 1984 s 237 (as amended): see INHERITANCE TAXATION vol 24 (Reissue) PARA 683 et seq.

4 Ie the Land Registration Act 2002 ss 29, 30: see PARAS 935-936 ante.

5 Ie the Inheritance Tax Act 1984 s 237(6), s 238 (as amended): see INHERITANCE TAXATION vol 24 (Reissue) PARA 683 et seq.

6 Land Registration Act 2002 s 31.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(iv) Effect of Registered Dispositions/B. EFFECT ON MISCELLANEOUS RIGHTS/939. Rights of pre-emption.

## **B. EFFECT ON MISCELLANEOUS RIGHTS**

### **939. Rights of pre-emption.**

A right of pre-emption in relation to registered land<sup>1</sup> has effect from the time of creation as an interest capable of binding successors in title, subject to the rules about the effect of dispositions on priority<sup>2</sup>. This provision has effect in relation to rights of pre-emption created on or after 13 October 2003<sup>3</sup>.

1 'Registered land' means a registered estate or registered charge: Land Registration Act 2002 s 132(1). For the meaning of 'registered estate' see PARA 861 note 3 ante; and for the meaning of 'registered charge' see PARA 861 note 8 ante.

2 Ibid s 115(1). The rules referred to in the text are the rules contained in ss 28-31: see PARAS 934-938 ante.

3 Ibid s 115(2). The date mentioned in the text is the date when s 115 came into force: see PARA 805 note 1 ante.

Prior to the enactment of s 115, the precise status of a right of pre-emption was unclear but there was authority to the effect that such a right did not take any priority or confer an interest in land on the grantee until the grantor chose to fulfil the condition on which the right becomes exercisable: see *Pritchard v Briggs* [1980] Ch 338, [1980] 1 All ER 294, CA; cf *Murray v Two Strokes Ltd* [1973] 3 All ER 357, [1973] 1 WLR 823; *Manchester Ship Canal Co v Manchester Racecourse Co* [1901] 2 Ch 37, CA; *Kling v Keston Properties Ltd* [1984] LS Gaz 1683, (1985) 49 P & CR 212. For criticism of the dicta of the Court of Appeal in *Pritchard v Briggs* supra see *London and Blenheim Estates Ltd v Ladbroke Retail Parks Ltd* [1994] 1 WLR 31 at 38, CA, per Peter Gibson LJ. See further *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARAS 5.26-5.28.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(iv) Effect of Registered Dispositions/B. EFFECT ON MISCELLANEOUS RIGHTS/940. Equities arising by estoppel.

### **940. Equities arising by estoppel.**

For the avoidance of doubt, the Land Registration Act 2002<sup>1</sup> declares that in relation to registered land<sup>2</sup>, an equity by estoppel<sup>3</sup> has effect from the time the equity arises as an interest capable of binding successors in title, subject to the rules<sup>4</sup> about the effect of dispositions on priority<sup>5</sup>.

1 See the Land Registration Act 2002 s 116; and the text and notes 2-5 infra.

2 For the meaning of 'registered land' see PARA 939 note 1 ante.

3 Land Registration Act 2002 s 116(a). As to equities arising by estoppel and the relief granted by the courts in such cases see eg *Crabb v Arun District Council* [1976] Ch 179 at 198, CA, per Scarman LJ; *Pascoe v Turner* [1979] 1 WLR 431; *Baker v Baker* [1993] 2 FLR 247; *Jennings v Rice* [2002] EWCA Civ 159, [2003] 1 FCR 501. There is authority for the view that such an equity is a proprietary, rather than merely a personal, right: see eg *Sen v Headley* [1991] Ch 425 at 440, CA, per Nourse LJ; *Voyce v Voyce* (1991) 62 P & CR 290 at 293. See also eg *Taylor v Needham* (1810) 2 Taunt 278; *Duke of Beaufort v Patrick* (1853) 17 Beav 60; *Plimmer v City of Wellington Corpn* (1884) 9 App Cas 699, PC; *Gresham Life Assurance Society v Crowther* [1914] 2 Ch 219; *Hopgood v Brown* [1955] 1 All ER 550, [1955] 1 WLR 213, CA; *Westminster Bank Ltd v Lee* [1956] Ch 7, [1955] 2 All ER 883; *Chalmers v Pardoe* [1963] 3 All ER 552, [1963] 1 WLR 677; *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175, [1965] 2 All ER 472, HL; *Inwards v Baker* [1965] 2 QB 29, [1965] 1 All ER 446; *ER Ives Investment Ltd v High* [1967] 2 QB 379, [1967] 1 All ER 504; *Ward v Kirkland* [1967] Ch 194, [1966] 1 All ER 609; *Brikom Investments Ltd v Carr* [1979] QB 467, [1979] 2 All ER 753, CA; *Blacklocks v JB Developments (Godalming) Ltd* [1982] Ch 183, [1981] 3 All ER 392; *Maharaj v Chand* [1986] AC 898, [1986] 3 All ER 107; *JT*

*Developments Ltd v Quinn* (1990) 62 P & CR 33, CA; *Abbey National Building Society v Cann* [1991] AC 56, [1990] 1 All ER 1085, HL; *Habermann v Koehler* (1996) 73 P & CR 515, CA; *Lloyds Bank plc v Carrick* [1996] 4 All ER 630, CA; *Yaxley v Gotts* [2000] Ch 162, [2000] 1 All ER 711, [1999] EGCS 92, CA.

4 The rules referred to in the text are the rules contained in the Land Registration Act 2002 ss 28-31: see PARAS 934-938 ante.

5 Ibid s 116. The Law Commission has expressed the view that this provision is declaratory only and does not effect a change in the law: see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARAS 5.30-5.31.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(iv) Effect of Registered Dispositions/B. EFFECT ON MISCELLANEOUS RIGHTS/941. Mere equities.

### 941. Mere equities.

For the avoidance of doubt the Land Registration Act 2002<sup>1</sup> declares that in relation to registered land<sup>2</sup>, a mere equity<sup>3</sup> has effect from the time the equity arises as an interest capable of binding successors in title, subject to the rules<sup>4</sup> about the effect of dispositions on priority<sup>5</sup>.

1 See the Land Registration Act 2002 s 116; and the text and notes 2-5 infra.

2 For the meaning of 'registered land' see PARA 939 note 1 ante.

3 Land Registration Act 2002 s 116(b). As to the meaning of 'mere equity' see *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175 at 1238, HL, per Lord Upjohn (an equitable proprietary right that is capable of binding successive owners of land, and which is ancillary to or dependent upon an equitable estate or interest in the land); and see *Nurdin & Peacock plc v DB Ramsden & Co Ltd* [1999] 1 EGLR 119 (mere equity capable of existing as overriding interest in relation to registered land). See also *Phillips v Phillips* (1861) 4 De GF & J 208 at 218 (right to set aside a transfer for fraud); *Bainbridge v Browne* (1881) 18 ChD 18 (right to set aside a transfer for undue influence); *Nurdin & Peacock plc v DB Ramsden & Co Ltd* supra (right to rectify an instrument for mistake); *Fuller v Judy Properties Ltd* (1991) 64 P & CR 176 at 184 (right to seek relief against forfeiture of lease after landlord has peaceably re-entered); *Mid-Glamorgan County Council v Ogwr Borough Council* (1993) 68 P & CR 1 at 9 (where title unregistered, mere equity capable of being defeated by bona fide purchaser of either legal estate or equitable interest for value without notice).

4 The rules referred to in the text are the rules contained in the Land Registration Act 2002 ss 28-31: see PARAS 934-938 ante.

5 Ibid s 116. In relation to registered land, s 116 reverses the decision in *Mid-Glamorgan County Council v Ogwr Borough Council* (1993) 68 P & CR 1 so far as a later purchaser of an equitable interest is concerned, and brings mere equities within the general principles of priority applicable to registered land: see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 5.36.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(iv) Effect of Registered Dispositions/B. EFFECT ON MISCELLANEOUS RIGHTS/942. Inchoate rights arising under the Prescription Act 1832.

### 942. Inchoate rights arising under the Prescription Act 1832.

Rights over registered land which may be acquired by prescription under the Prescription Act 1832<sup>1</sup> have been held to be inchoate rights until put in issue in legal proceedings<sup>2</sup>. However, once there has been user of a kind that satisfies the requirements for prescription for a period

and in the manner prescribed by that Act<sup>3</sup>, it seems that such user will not normally be interrupted by a disposition of the affected land<sup>4</sup>.

1 As to the acquisition of rights under the Prescription Act 1832 see COMMONS vol 13 (2009) PARA 473; EASEMENTS AND PROFITS A PRENDRE; MARKETS, FAIRS AND STREET TRADING.

2 See *Hyman v Van den Bergh* [1907] 2 Ch 516 at 524-525; [1908] 1 Ch 167, CA. See also *Colls v Home and Colonial Stores Ltd* [1904] AC 179 at 189-190; *Newnham v Willison* (1987) 56 P & CR 8 at 12.

3 See eg *Pugh v Savage* [1970] 2 QB 373; and see COMMONS vol 13 (2009) PARA 473; EASEMENTS AND PROFITS A PRENDRE; MARKETS, FAIRS AND STREET TRADING.

4 See *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 5.38.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(v) Charges over Registered Land/A. IN GENERAL/943. Introduction.

## **(v) Charges over Registered Land**

### **A. IN GENERAL**

#### **943. Introduction.**

An owner's powers in relation to a registered estate<sup>1</sup> include powers to charge the estate at law with the payment of money<sup>2</sup>. An owner's powers in relation to a registered charge<sup>3</sup> consist of: (1) power to make a disposition of any kind permitted by the general law in relation to an interest of that description, other than a legal sub-mortgage<sup>4</sup>; and (2) power to create a legal sub-charge<sup>5</sup>. The grant of a legal charge is a registrable disposition<sup>6</sup>, as is the transfer of a registered charge or the grant of a sub-charge<sup>7</sup>.

The registration requirements in respect of such dispositions are discussed elsewhere in this title<sup>8</sup>, as is the effect on priority of the completion by registration of a registrable disposition of a registered charge<sup>9</sup>. There are further provisions with regard to registered charges<sup>10</sup>.

1 For the meaning of 'registered estate' see PARA 861 note 3 ante.

2 See the Land Registration Act 2002 s 23(1)(b); and PARA 906 ante. As to the right to exercise owner's powers see PARA 908 ante.

3 For the meaning of 'registered charge' see PARA 861 note 8 ante.

4 See the Land Registration Act 2002 s 23(1)(a); and PARA 907 ante. For the meaning of 'legal sub-mortgage' see PARA 907 note 3 ante.

5 See *ibid* s 23(2)(b); and PARA 907 ante.

6 See *ibid* s 27(2)(f); and PARA 911 ante.

7 See *ibid* s 27(3); and PARA 913 ante.

8 See PARAS 920-928 ante.

9 See PARA 936 ante.

10 See PARA 944 et seq post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(v) Charges over Registered Land/B. RELATIVE PRIORITY OF CHARGES/944. Relative priority of registered charges.

## ***B. RELATIVE PRIORITY OF CHARGES***

### **944. Relative priority of registered charges.**

Registered charges<sup>1</sup> on the same registered estate<sup>2</sup>, or on the same registered charge, are to be taken to rank as between themselves in the order shown in the register<sup>3</sup>. Rules<sup>4</sup> may make provision about how the priority of registered charges as between themselves is to be shown in the register<sup>5</sup>. Except as shown by an entry in the individual register<sup>6</sup> to the contrary<sup>7</sup>, the order in which registered charges are entered in an individual register shows the order in which the registered charges rank as between themselves<sup>8</sup>.

1 For the meaning of 'registered charge' see PARA 861 note 3 ante.

2 For the meaning of 'registered estate' see PARA 861 note 8 ante.

3 Land Registration Act 2002 s 48(1). As to the register of title see PARA 811 et seq ante.

4 As to land registration rules generally see PARA 1125 post.

5 Land Registration Act 2002 s 48(2)(a).

6 For the meaning of 'individual register' see PARA 812 note 3 ante.

7 An entry made under the Land Registration Rules 2003, SI 2003/1417, r 105(3) (see PARA 946 post) is a contrary entry for these purposes: see r 105(5).

8 Ibid r 101.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(v) Charges over Registered Land/B. RELATIVE PRIORITY OF CHARGES/945. Alteration of priority of registered charges.

### **945. Alteration of priority of registered charges.**

Rules<sup>1</sup> may make provision about applications for registration of the priority of registered charges<sup>2</sup> as between themselves<sup>3</sup>. An application to alter the priority of registered charges, as between themselves, must be made by or with the consent of the proprietor or a person entitled to be registered as proprietor of any registered charge the priority of which is adversely affected by the alteration, but no such consent is required from a person who has executed the instrument which alters the priority of the charges<sup>4</sup>. The Chief Land Registrar<sup>5</sup> may accept a conveyancer's<sup>6</sup> certificate confirming that the conveyancer holds any necessary consents<sup>7</sup>.

The registrar must make an entry in the register<sup>8</sup> in such terms as he considers appropriate to give effect to the application<sup>9</sup>.

- 1 As to land registration rules generally see PARA 1125 post.
- 2 For the meaning of 'registered charge' see PARA 861 note 8 ante.
- 3 Land Registration Act 2002 s 48(2)(b).
- 4 Land Registration Rules 2003, SI 2003/1417, r 102(1).
- 5 As to the Chief Land Registrar see PARA 1066 post.
- 6 For the meaning of 'conveyancer' see PARA 832 note 4 ante.
- 7 Land Registration Rules 2003, SI 2003/1417, r 102(2). In the absence of a contractual agreement between the chargor and the chargee, the former has no right to insist on the order in which successive mortgage debts are satisfied; it is therefore open to chargees to alter the priorities between themselves without the chargor's consent: *Cheah v Equiticorp Finance Group Ltd* [1992] 1 AC 472.
- 8 As to the register of title see PARA 811 et seq ante.
- 9 Land Registration Rules 2003, SI 2003/1417, r 102(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(v) Charges over Registered Land/B. RELATIVE PRIORITY OF CHARGES/946. Creation of overriding statutory charges.

#### **946. Creation of overriding statutory charges.**

If the Chief Land Registrar<sup>1</sup> enters a person in the register<sup>2</sup> as the proprietor of a charge<sup>3</sup> which:

- 180 (1) is created by or under an enactment; and
- 181 (2) has effect to postpone a charge which at the time of registration of the statutory charge is either entered in the register, or the basis for an entry in the register,

he must in accordance with rules<sup>4</sup> give notice of the creation of the statutory charge to such person as rules may provide<sup>5</sup>.

An applicant for registration of a statutory charge that has the effect mentioned above must lodge the prescribed form<sup>6</sup> with the application<sup>7</sup>. If the applicant satisfies the registrar that the statutory charge has the priority specified in that form, the registrar must make an entry showing that priority in the charges register<sup>8</sup> of the affected registered title<sup>9</sup>. The registrar must give notice of the creation of the statutory charge:

- 182 (a) to the registered proprietor of a registered charge entered in the charges register of the affected registered title at the time of registration of the statutory charge<sup>10</sup>; and
- 183 (b) to any person who appears to him to be entitled to a charge protected by a notice entered in that charges register at that time<sup>11</sup>.

He is not, however, obliged to give notice to a person referred to in head (b) above if that person's name and his address for service<sup>12</sup> are not set out in the individual register<sup>13</sup> in which the notice is entered<sup>14</sup>.



If the applicant does not satisfy the registrar as described above but the registrar considers that the applicant has an arguable case, he may make an entry in the charges register of the affected registered title that the applicant claims the priority specified in the prescribed form<sup>15</sup>. If he makes such an entry, the registrar must give notice to the persons mentioned in heads (a) and (b) above, and subject to the same proviso<sup>16</sup>. Where such an entry has been made:

- 184 (i) the proprietor of the statutory charge which gave rise to the entry; or
- 185 (ii) the proprietor of a charge<sup>17</sup> entered in the charges register of the affected registered title which, subject to the effect of the entry, would rank in priority or have equal priority with that statutory charge<sup>18</sup>,

may apply for the entry to be removed and to be replaced by an entry showing that the statutory charge has the priority specified<sup>19</sup>. Such an applicant must provide evidence to satisfy the registrar that he should take the action sought by the applicant<sup>20</sup>. Before taking that action, the registrar must give notice of the application to any proprietors other than the applicant who are proprietors within head (i) or head (ii) above<sup>21</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 As to the register of title see PARA 811 et seq ante.

3 For the meaning of 'charge' see PARA 861 note 5 ante.

4 As to land registration rules generally see PARA 1125 post.

5 Land Registration Act 2002 s 50.

6 As to the prescribed form see Land Registration Rules 2003, SI 2003/1417, r 105(1), Sch 1 Form SC. As to the use of forms generally see PARA 1087 et seq post.

7 Ibid r 105(1).

8 For the meaning of 'charges register' see PARA 816 note 1 ante.

9 Land Registration Rules 2003, SI 2003/1417, r 105(2). As to the meaning of 'registered title' see PARA 834 ante.

10 Ibid r 106(1)(a).

11 Ibid r 106(1)(b).

12 Ie under ibid r 198: see PARA 1130 post.

13 For the meaning of 'individual register' see PARA 812 note 3 ante.

14 Land Registration Rules 2003, SI 2003/1417, r 106(2).

15 Ibid r 105(3).

16 Ibid r 105(4). The proviso referred to in the text is the one mentioned in r 106(2) (see the text and notes 12-14 supra).

17 Ibid r 105(5)(b) (see head (ii) in the text) includes the proprietor of a statutory charge entered in the charges register of the affected registered title which has had an entry made in respect of it under r 105(3) claiming priority over the statutory charge referred to in r 105(5)(a) (see head (i) in the text): r 105(6).

18 Ie would have priority under ibid r 101 (see PARA 944 ante): r 105(5)(b).

19 Ibid r 105(5). The replacement entry referred to in the text is an entry of the kind referred to in ibid r 105(2) (see the text and notes 8-9 supra): see r 105(5).

20 Ibid r 105(7).

21 Ibid r 105(8).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(v) Charges over Registered Land/B. RELATIVE PRIORITY OF CHARGES/947. Priority of equitable charges.

#### **947. Priority of equitable charges.**

No specific provision is made by the Land Registration Act 2002 with regard to the priority of equitable charges. Such charges are subject to the basic rule about priority<sup>1</sup> and thus rank by the date of their creation<sup>2</sup>.

1 Ie the Land Registration Act 2002 s 28: see PARA 934 ante.

2 See *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 7.17. As to equitable mortgages and charges see further MORTGAGE.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(v) Charges over Registered Land/B. RELATIVE PRIORITY OF CHARGES/948. Tacking and further advances.

#### **948. Tacking and further advances.**

The proprietor of a registered charge<sup>1</sup> may make a further advance on the security of the charge ranking in priority to a subsequent charge if he has not received from the subsequent chargee notice of the creation of the subsequent charge<sup>2</sup>. Notice given for these purposes is to be treated as received at the time when, in accordance with rules<sup>3</sup>, it ought to have been received<sup>4</sup>.

The proprietor of a registered charge may also make a further advance on the security of the charge ranking in priority to a subsequent charge if: (1) the advance is made in pursuance of an obligation<sup>5</sup>; and (2) at the time of the creation of the subsequent charge the obligation was entered in the register in accordance with rules<sup>6</sup>. The proprietor of a registered charge, or a person applying to be so registered who is under an obligation to make further advances on the security of that charge, may apply to the Chief Land Registrar<sup>7</sup> for such obligation to be entered in the register for these purposes<sup>8</sup>. The registrar must make an entry in the register in such terms as he considers appropriate to give effect to such an application<sup>9</sup>.

The proprietor of a registered charge may also make a further advance on the security of the charge ranking in priority to a subsequent charge if: (a) the parties to the prior charge have agreed a maximum amount for which the charge is security; and (b) at the time of the creation of the subsequent charge the agreement was entered in the register in accordance with rules<sup>10</sup>. Rules may disapply this provision in relation to charges of a description specified in the rules, or may provide for its application to be subject, in the case of charges of a description so specified, to compliance with such conditions as may be so specified<sup>11</sup>. Where the parties to a legal charge which is a registered charge or which is a registrable disposition<sup>12</sup> have agreed a maximum amount for which the charge is security, the proprietor of the registered charge or a person applying to be registered as proprietor of the registrable disposition may apply to the registrar for such agreement to be entered in the register<sup>13</sup>. The registrar must make an entry in the register in such terms as he considers appropriate to give effect to such an application<sup>14</sup>.

Except as provided by the provisions described above, tacking<sup>15</sup> in relation to a charge over registered land is only possible with the agreement of the subsequent chargee<sup>16</sup>.

1 For the meaning of 'registered charge' see PARA 861 note 8 ante.

2 Land Registration Act 2002 s 49(1). Cf the Land Registration Act 1925 s 30(1) (repealed), under which the registrar served notice of the second charge on the first lender. In practice, that provision was little used and lenders continued to rely on the common law rules as to notice laid down in *Hopkinson v Rolt* (1861) 9 HL Cas 514: see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 7.25.

3 As to land registration rules generally see PARA 1125 post.

4 Land Registration Act 2002 s 49(2). A notice may be given for these purposes by one of the following methods: (1) by post, to the postal address, whether or not in the United Kingdom, entered in the register as the prior chargee's address for service; (2) by leaving the notice at that address; (2) by sending to the box number at the relevant document exchange entered in the register as an additional address for service of the prior chargee; (4) by electronic transmission to the electronic address entered in the register as an additional address for service of the prior chargee; or (5) by post, document exchange, fax or electronic transmission to the address, box number or fax number provided, where the prior chargee has provided to the subsequent chargee a postal address, document exchange box number, fax number, email or other electronic address, and stated in writing to the subsequent chargee that notices to the prior chargee under s 49(1) may be sent to that address, box number or fax number: Land Registration Rules 2003, SI 2003/1417, r 107(1)-(3). A notice given by one of these methods ought to have been received, for the purposes of the Land Registration Act 2002 s 49(2) at the time shown as follows: (a) if the method was by post to an address in the United Kingdom, on the second working day after posting; (b) if the method was by leaving it at a postal address, on the working day after it was left; (c) if the method was by post to an address outside the United Kingdom, on the seventh working day after posting; (d) if the method was by document exchange, on the second working day after it was left at the sender's document exchange; (e) if the method was by fax, on the working day after transmission; and (f) if the method was by electronic transmission to an electronic address entered in the register as an address for service or email or other electronic means of delivery under the Land Registration Rules 2003, SI 2003/1417, r 107(3), on the second working day after transmission: r 107(1), (4). A notice posted or transmitted after 5pm on a working day or posted or transmitted on a day which is not a working day is to be treated as having been posted or transmitted on the next working day: r 107(5). For these purposes, 'post' means pre-paid delivery by a postal service which seeks to deliver documents within the United Kingdom no later than the next working day in all or the majority of cases, and to deliver outside the United Kingdom within such a period as is reasonable in all the circumstances; 'prior chargee' means the proprietor of a registered charge to whom notice is being given under the Land Registration Act 2002 s 49(1); 'subsequent chargee' means the chargee giving notice under s 49(1); and 'working day' means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or any other day either specified or declared by proclamation under the Banking and Financial Dealings Act 1971 s 1 (see TIME vol 97 (2010) PARAS 320-321); Land Registration Rules 2003, SI 2003/1417, r 107(6). For the meaning of 'United Kingdom' see PARA 826 note 4 ante.

5 Land Registration Act 2002 s 49(3)(a).

6 Ibid s 49(3)(b). Cf the Land Registration Act 1925 s 30(3) (repealed), which only applied in respect of the creation of a subsequent registered charge.

7 As to the Chief Land Registrar see PARA 1066 post.

8 Land Registration Rules 2003, SI 2003/1417, r 108(1). The application must be made in Sch 1 Form CH2: r 108(2). However, Sch 1 Form CH2 need not be used if the application is contained in panel 7 of Sch 1 Form CH1 (see PARA 920 note 5 ante), or in a charge received for registration where the form of that charge has been approved by the registrar: r 108(3). As to the use of forms generally see PARA 1087 et seq post.

9 Ibid r 108(4).

10 Land Registration Act 2002 s 49(4). There was no equivalent to this provision in the Land Registration Act 1925. As to the rationale behind its introduction see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 7.35.

11 Land Registration Act 2002 s 49(5).

12 For the meaning of 'registrable disposition' see PARA 911 ante.

13 Land Registration Rules 2003, SI 2003/1417, r 109(1). The application must be made in Sch 1 Form CH3: r 109(2).

14 Ibid r 109(3).

15 As to tacking see further MORTGAGE vol 77 (2010) PARAS 264-265.

16 Land Registration Act 2002 s 49(1).

## **UPDATE**

### **948 Tacking and further advances**

NOTE 4--Definition of 'working day' omitted: SI 2003/1417 r 107(6) (amended by SI 2008/1919).

NOTE 8--SI 2003/1417 r 108(3) amended: SI 2008/1750, SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(v) Charges over Registered Land/B. RELATIVE PRIORITY OF CHARGES/949. Local land charges.

### **949. Local land charges.**

Local land charges override registrable dispositions<sup>1</sup> and first registration<sup>2</sup> and are subject to their own system of registration<sup>3</sup>. However, a charge over registered land<sup>4</sup> which is a local land charge may only be realised if the title to the charge is registered<sup>5</sup>. An application to register<sup>6</sup> the title to a charge over registered land which is a local land charge must be supported by evidence of the charge<sup>7</sup>.

1 See the Land Registration Act 2002 ss 29(2)(a)(ii), 30(2)(a)(ii), Sch 3 para 6; and PARA 962 post.

2 See ibid ss 11(4)(b), 12(4)(c), Sch 1 para 6; and PARA 866 ante.

3 See generally LAND CHARGES vol 26 (2004 Reissue) PARA 671 et seq.

4 For the meaning of 'registered' see PARA 826 note 2 ante; and as to the meaning of 'land' see PARA 826 note 4 ante.

5 Land Registration Act 2002 s 55.

6 As to the register of title see PARA 811 et seq ante.

7 Land Registration Rules 2003, SI 2003/1417, r 104.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(v) Charges over Registered Land/C. CHARGEES' POWERS AND DUTIES/950. Effect of completion by registration.

## **C. CHARGEES' POWERS AND DUTIES**

### **950. Effect of completion by registration.**

On completion of the relevant registration requirements<sup>1</sup>, a charge<sup>2</sup> created by means of a registrable disposition<sup>3</sup> of a registered estate<sup>4</sup> has effect, if it would not otherwise do so, as a charge by deed by way of legal mortgage<sup>5</sup>.

1 As to the relevant registration requirements see PARAS 826 et seq, 1075 et seq ante.

2 For the meaning of 'charge' see PARA 861 note 5 ante.

3 As to registrable dispositions see PARA 911 et seq ante.

4 For the meaning of 'registered estate' see PARA 861 note 3 ante.

5 Land Registration Act 2002 s 51.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(v) Charges over Registered Land/C. CHARGEES' POWERS AND DUTIES/951. Protection of disponees.

### **951. Protection of disponees.**

Subject to any entry in the register<sup>1</sup> to the contrary<sup>2</sup>, the proprietor of a registered charge<sup>3</sup> is to be taken to have, in relation to the property subject to the charge, the powers of disposition conferred by law on the owner of a legal mortgage<sup>4</sup>. However, this provision has effect only for the purpose of preventing the title of a donee being questioned, and so does not affect the lawfulness of a disposition<sup>5</sup>.

1 As to the register of title see PARA 811 et seq ante.

2 An example of such an entry might be the entry of a restriction where the legal date of redemption has been postponed for many years, as in *Twentieth Century Banking Corp v Wilkinson* [1977] Ch 99: see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 7.8.

3 For the meaning of 'registered charge' see PARA 861 note 8 ante.

4 Land Registration Act 2002 s 52(1).

5 Ibid s 52(2). It is thus open to the chargor to pursue any other remedies he may have, such as the right to sue the chargee for damages for an irregular exercise of the chargee's powers: see the Law of Property Act 1925 s 104(2); and MORTGAGE vol 77 (2010) PARA 468.

The protection afforded to donees under the Land Registration Act 2002 s 52 is wider than that afforded to a buyer under the Law of Property Act 1925 s 104. A buyer is not protected under s 104 if he has actual or, it seems, constructive notice of any irregularity: see *Lord Waring v London and Manchester Assurance Co Ltd* [1935] Ch 310 at 318 per Crossman J; and MORTGAGE vol 77 (2010) PARA 469.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(v) Charges over Registered Land/C. CHARGEES' POWERS AND DUTIES/952. Powers as sub-chargee.

### **952. Powers as sub-chargee.**

The registered<sup>1</sup> proprietor of a sub-charge<sup>2</sup> has, in relation to the property subject to the principal charge or any intermediate charge, the same powers as the sub-chargor<sup>3</sup>.

- 1 For the meaning of 'registered' see PARA 826 note 2 ante.
- 2 For the meaning of 'sub-charge' see PARA 861 note 7 ante.
- 3 Land Registration Act 2002 s 53. The registered sub-chargee must be registered as the proprietor of the sub-charge and the sub-charge must be entered on the register: see s 59(3); and PARA 861 ante.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(v) Charges over Registered Land/C. CHARGEES' POWERS AND DUTIES/953. Power to give receipt in case of joint proprietors of registered charge.

### **953. Power to give receipt in case of joint proprietors of registered charge.**

Where a charge<sup>1</sup> is registered<sup>2</sup> in the name of two or more proprietors, a valid receipt for the money secured by the charge may be given by: (1) the registered proprietors<sup>3</sup>; (2) the survivors or survivor of the registered proprietors<sup>4</sup>; or (3) the personal representative of the last survivor of the registered proprietors<sup>5</sup>.

- 1 For the meaning of 'charge' see PARA 861 note 5 ante.
- 2 For the meaning of 'registered' see PARA 826 note 2 ante.
- 3 Land Registration Act 2002 s 56(a).
- 4 Ibid s 56(b).
- 5 Ibid s 56(c).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(v) Charges over Registered Land/C. CHARGEES' POWERS AND DUTIES/954. Duties in relation to application of proceeds of sale.

### **954. Duties in relation to application of proceeds of sale.**

Where a mortgagee exercises his power of sale, the money arising from a sale is applicable in the first instance to the discharge of any prior incumbrances to which the sale is not made subject or to the payment into court of a sum to meet any prior incumbrance<sup>1</sup>. The balance or the whole, as the case may be, is held by the mortgagee in trust to be applied, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale, or any attempted sale, or otherwise; secondly, in discharge of the mortgage money, interest and costs, and other money, if any, due under the mortgage; and the residue is to be paid to the person entitled to the mortgaged property or authorised to give receipts for the proceeds of sale<sup>2</sup>.

For the purposes of the above provision<sup>3</sup> in its application to the proceeds of sale of registered land<sup>4</sup>, a person is to be taken to have notice of anything in the register immediately before the disposition on sale<sup>5</sup>.

- 1 See the Law of Property Act 1925 s 50; and MORTGAGE vol 77 (2010) PARA 462.

2 See *ibid* s 105; and MORTGAGE vol 77 (2010) PARA 472.

3 See for the purpose of *ibid* s 105: see the Land Registration Act 2002 s 54.

4 For the meaning of 'registered' see PARA 826 note 2 ante; and as to the meaning of 'land' see PARA 826 note 4 ante.

5 Land Registration Act 2002 s 54. The chargee must therefore search the register before paying over any surplus which it holds: see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 7.43.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(v) Charges over Registered Land/D. MISCELLANEOUS ENTRIES IN THE REGISTER/955. Entry of right of consolidation.

## **D. MISCELLANEOUS ENTRIES IN THE REGISTER**

### **955. Entry of right of consolidation.**

A mortgagee who holds several distinct mortgages under the same mortgagor which are redeemable, not under the right of redemption expressly reserved by the mortgage deeds, but only by virtue of the equity of redemption arising after default in payment at the fixed day<sup>1</sup>, may, within certain limits, and against certain persons who are entitled to redeem all or some of the mortgages, consolidate the mortgages, that is, treat them as one, and decline to be redeemed as to any unless he is redeemed as to all<sup>2</sup>. This right is excluded by statute in certain circumstances<sup>3</sup>.

Rules<sup>4</sup> may make provision about entry in the register<sup>5</sup> of a right of consolidation in relation to a registered charge<sup>6</sup>. A chargee who has a right of consolidation in relation to a registered charge may apply to the Chief Land Registrar<sup>7</sup> for an entry to be made in respect of that right in the individual register<sup>8</sup> in which the charge is registered<sup>9</sup>. The application must be in the prescribed form<sup>10</sup>. The registrar must make an entry in the individual register in such terms as he considers appropriate to give effect to the application<sup>11</sup>.

1 See MORTGAGE vol 77 (2010) PARA 329.

2 See *Jennings v Jordan* (1881) 6 App Cas 698 at 700, HL, per Lord Selborne LC; and see the same case in the Court of Appeal sub nom *Mills v Jennings* (1880) 13 ChD 639 at 646, CA. See also *Griffith v Pound* (1890) 45 ChD 553 at 560. See further MORTGAGE vol 77 (2010) PARA 498.

3 See the Law of Property Act 1925 s 93(1); and MORTGAGE vol 77 (2010) PARA 500.

4 As to land registration rules generally see PARA 1125 post.

5 As to the register of title see PARA 811 et seq ante.

6 Land Registration Act 2002 s 57. For the meaning of 'registered charge' see PARA 861 note 8 ante.

7 As to the Chief Land Registrar see PARA 1066 post.

8 For the meaning of 'individual register' see PARA 812 note 3 ante.

9 Land Registration Rules 2003, SI 2003/1417, r 110(1).

10 *Ibid* r 110(2). As to the prescribed form see r 110(2), Sch 1 Form CC. As to the use of forms generally see PARA 1087 et seq post.

11 Ibid r 110(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(v) Charges over Registered Land/D. MISCELLANEOUS ENTRIES IN THE REGISTER/956. Certificate of registration of company charges.

### **956. Certificate of registration of company charges.**

When making an application for the registration of a charge<sup>1</sup> created by a company registered under the Companies Acts<sup>2</sup>, a limited liability partnership<sup>3</sup>, or a Northern Ireland company<sup>4</sup>, the applicant must produce to the Chief Land Registrar<sup>5</sup> a certificate issued under the relevant companies legislation<sup>6</sup> that the charge has been registered under the appropriate statutory provision<sup>7</sup>. If the applicant does not produce the required certificate with the application for registration of the charge, the registrar must enter a note in the register that the charge is subject to the appropriate statutory provision<sup>8</sup>.

1 For the meaning of 'charge' see PARA 861 note 5 ante.

2 For the meaning of 'the Companies Acts' see PARA 815 note 4 ante.

3 I.e a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000: see PARTNERSHIP vol 79 (2008) PARA 234 et seq.

4 'Northern Ireland company' means a company formed and registered under the Companies (Northern Ireland) Order 1986, SI 1986/1032, or a company formed and registered in Northern Ireland under the former Northern Ireland Companies Acts (ie the Joint Stock Companies Acts, the Companies Act 1862, the Companies (Consolidation) Act 1908, the Companies Act (Northern Ireland) 1932 and the Companies Acts (Northern Ireland) 1960 to 1983); and 'Joint Stock Companies Acts' means the Joint Stock Companies Act 1856, the Joint Stock Companies Act 1857, the Joint Stock Banking Companies Act 1857 and the Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability 1858, or any one or more of those Acts (as the case may require) but does not include the Joint Stock Companies Act 1844: Land Registration Rules 2003, SI 2003/1417, r 111(3).

5 As to the Chief Land Registrar see PARA 1066 post.

6 I.e a certificate issued: (1) under the Companies Act 1985 s 401, that the charge has been registered under s 395; (2) under s 418, in the case of a company registered in Scotland, that the charge has been registered under s 410; or (3) under the Companies (Northern Ireland) Order 1986, SI 1986/1032, art 409, in the case of a Northern Ireland company, that the charge has been registered under art 403: Land Registration Rules 2003, SI 2003/1417, r 111(1). As to the certificate of registration see COMPANIES vol 15 (2009) PARA 1290. As from a day to be appointed, the Companies Act 1985 ss 395-424 (as amended) are repealed and replaced by the Companies Act 1989 Pt IV (ss 92-107). At the date at which this volume states the law, no such day had been appointed. See COMPANIES vol 15 (2009) PARA 1279 et seq.

7 Land Registration Rules 2003, SI 2003/1417, r 111(1).

8 Ibid r 111(2).

### **UPDATE**

### **956 Certificate of registration of company charges**

TEXT AND NOTES--SI 2003/1417 r 111 substituted: SI 2008/1919.

An application to register a charge created by an overseas company must be accompanied by evidence to satisfy the registrar that the charge has been registered under the Overseas Companies (Execution of Documents and Registration of Charges)



Regulations 2009, SI 2009/1917, Pt 3 (regs 8-28) (see COMPANIES vol 15 (2009) PARA 1833), or include a statement that the charge, when created, did not require to be so registered; and if no such evidence is lodged or statement included, the registrar must enter a note in the register to that effect: r 111A (added by SI 2009/1996).

NOTE 6--The reference is now to a certificate issued under the Companies Act 2006 s 869 (see COMPANIES vol 15 (2009) PARA 1289) or 885 (in the case of a company registered in Scotland) that the charge has been registered under s 860 (see COMPANIES vol 15 (2009) PARA 1277) or 878 (in the case of a company registered in Scotland): SI 2003/1417 r 111(1).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(v) Charges over Registered Land/D. MISCELLANEOUS ENTRIES IN THE REGISTER/957. Registration requirements on foreclosure.

### **957. Registration requirements on foreclosure.**

An application by a person who has obtained an order for foreclosure absolute<sup>1</sup> to be entered in the register<sup>2</sup> as proprietor of the registered estate<sup>3</sup> in respect of which the charge<sup>4</sup> is registered must be accompanied by the order<sup>5</sup> except that the Chief Land Registrar<sup>6</sup> may accept a conveyancer's<sup>7</sup> certificate confirming that the conveyancer holds the order for foreclosure absolute or an office copy of it<sup>8</sup>.

The registrar must:

- 186 (1) cancel the registration of the charge in respect of which the order was made<sup>9</sup>;
- 187 (2) cancel all entries in respect of interests over which the charge has priority<sup>10</sup>;  
and
- 188 (3) enter the applicant as proprietor of the registered estate<sup>11</sup>.

1 As to foreclosure see MORTGAGE vol 77 (2010) PARA 566 et seq.

If a mortgagee of registered land consisting of, or substantially consisting of, a dwelling-house brings a claim for enforcement of the security and, at the relevant time, there is a subsisting registration of: (1) a notice of matrimonial home rights under the Family Law Act 1996 s 31(10) (as amended) (see PARA 1122 post); (2) a notice under the Matrimonial Homes Act 1983 s 2(8) (repealed); or (3) a notice or caution under the Matrimonial Homes Act 1967 s 2(7) (repealed), then the mortgagee must serve notice of the claim on the person on whose behalf the notice or caution is entered if that person is not already a party to the claim: see the Family Law Act 1996 s 56(1), (2); and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 287. As to the meaning of 'dwelling-house' see s 63(1), (4); and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 285. The relevant time is the time when the claim is commenced or, if it is commenced within the priority period conferred by a certificate of the result of an official search made on behalf of the mortgagee which would disclose any such notice or caution, the date of that certificate: see s 56(3), (4). The priority period, for both registered and unregistered land, is the period for which, in accordance with the Land Charges Act 1972 s 11(5), (6) (see LAND CHARGES vol 26 (2004 Reissue) PARA 614), a certificate of an official search operates in favour of a purchaser: see the Family Law Act 1996 s 56(5).

2 As to the register of title see PARA 811 et seq ante.

3 For the meaning of 'registered estate' see PARA 861 note 3 ante.

4 For the meaning of 'charge' see PARA 861 note 5 ante.

5 Land Registration Rules 2003, SI 2003/1417, r 112(1).

6 As to the Chief Land Registrar see PARA 1066 post.

- 7 For the meaning of 'conveyancer' see PARA 832 note 4 ante.
- 8 Land Registration Rules 2003, SI 2003/1417, r 112(3).
- 9 Ibid r 112(2)(a).
- 10 Ibid r 112(2)(b). As to priority of charges see PARA 944 et seq ante. See also note 1 supra.
- 11 Ibid r 112(2)(c).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(v) Charges over  
Registered Land/D. MISCELLANEOUS ENTRIES IN THE REGISTER/958. Variation of terms of  
registered charge.

### **958. Variation of terms of registered charge.**

An application to register<sup>1</sup> an instrument varying the terms of a registered charge<sup>2</sup> must be in the prescribed form, must be made: (1) by, or with the consent of, the proprietor of the registered charge and the proprietor of the estate charged<sup>3</sup>; and (2) with the consent of the proprietor, or a person entitled to be registered as proprietor, of every other registered charge of equal or inferior priority<sup>4</sup> that is prejudicially affected by the variation<sup>5</sup>, but no such consent is required from the person who has executed the instrument<sup>6</sup>. The Chief Land Registrar<sup>7</sup> may accept a conveyancer's<sup>8</sup> certificate confirming that the conveyancer holds any necessary consents<sup>9</sup>.

If the registrar is satisfied that the proprietor of any other registered charge of equal or inferior priority to the varied charge that is prejudicially affected by the variation is bound by it, he must make a note of the variation in the register<sup>10</sup>. If the registrar is not so satisfied, he may make an entry in the register that an instrument which is expressed to vary the terms of the registered charge has been entered into<sup>11</sup>.

- 1 As to the register of title see PARA 811 et seq ante.
- 2 For the meaning of 'registered charge' see PARA 861 note 8 ante.
- 3 Land Registration Rules 2003, SI 2003/1417, r 113(1)(a).
- 4 As to the priority of registered charges see PARA 944 et seq ante.
- 5 Land Registration Rules 2003, SI 2003/1417, r 113(1)(b).
- 6 Ibid r 113(1).
- 7 As to the Chief Land Registrar see PARA 1066 post.
- 8 For the meaning of 'conveyancer' see PARA 832 note 4 ante.
- 9 Land Registration Rules 2003, SI 2003/1417, r 113(2).
- 10 Ibid r 113(3).
- 11 Ibid r 113(4).

## **UPDATE**

### **958 Variation of terms of registered charge**

TEXT AND NOTES--SI 2003/1417 r 113 substituted: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(v) Charges over  
Registered Land/D. MISCELLANEOUS ENTRIES IN THE REGISTER/959. Discharges and releases  
of registered charges.

### **959. Discharges and releases of registered charges.**

A discharge of a registered charge<sup>1</sup> must be<sup>2</sup> in the prescribed form<sup>3</sup>, as must a release of part of the registered estate<sup>4</sup> in a registered title<sup>5</sup> from a registered charge<sup>6</sup>. Any discharge or release in the appropriate prescribed form must be executed as a deed<sup>7</sup> or authenticated in such other manner as the Chief Land Registrar<sup>8</sup> may approve<sup>9</sup>. An application to register such a discharge or release must be made in the prescribed form<sup>10</sup>.

During the currency of any relevant notice<sup>11</sup>, however, and subject to and in accordance with the limitations contained in that notice, notification of the discharge of a registered charge, or of the release of part of a registered title in a registered title from a registered charge, may be delivered to the registrar in electronic form<sup>12</sup>. Such notification so given is to be regarded as having the same effect as a discharge or a release of part in the appropriate prescribed form<sup>13</sup> executed in accordance with the above requirements by or on behalf of the person who has delivered it to the registrar<sup>14</sup>.

Notwithstanding the provisions described above<sup>15</sup>, the registrar is entitled to accept and act upon any other proof of satisfaction of a charge that he may regard as sufficient<sup>16</sup>.

1 For the meaning of 'registered charge' see PARA 861 note 8 ante.

2 Ie subject to the Land Registration Rules 2003, SI 2003/1417, r 115: see the text and notes 11-14 infra.

3 Ibid r 114(1). As to the prescribed form see r 114(1), Sch 1 Form DS1. As to the use of forms generally see PARA 1087 et seq post.

4 For the meaning of 'registered estate' see PARA 861 note 3 ante.

5 As to the meaning of 'registered title' see PARA 834 ante.

6 Land Registration Rules 2003, SI 2003/1417, r 114(2). As to the prescribed form see s 114(2), Sch 1 Form DS3.

7 As to the formalities for execution as a deed see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 27 et seq. See also EXECUTORS AND ADMINISTRATORS; WILLS.

8 As to the Chief Land Registrar see PARA 1066 post.

9 Land Registration Rules 2003, SI 2003/1417, r 114(3).

10 Ibid r 114(5). An application to register a discharge in Sch 1 Form DS1 must be made in Sch 1 Form AP1 or Sch 1 Form DS2 and an application to register a release in Sch 1 Form DS3 must be made in Sch 1 Form AP1: see r 114(5).

11 Ie a notice given under ibid Sch 2 (see PARA 1077 post): r 115(1).

12 Ibid r 115(1). As to electronic conveyancing generally see PARA 1049 et seq post.

13 Ie in ibid Sch 1 Form DS1 or Sch 1 Form DS3, as appropriate: see r 115(2).

14 Ibid r 115(2).

15 le notwithstanding *ibid* r 115(1)-(2): see r 114(4).

16 *Ibid* r 114(4).

## UPDATE

### 959 Discharges and releases of registered charges

NOTES 10, 13--SI 2003/1417 Sch 1 Forms DS1, DS2, DS3, AP1 substituted by SI 2008/1919; and amended by SI 2009/1996.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(vi) Unregistered Interests which override Registered Dispositions/960. Introduction.

## (vi) Unregistered Interests which override Registered Dispositions

### 960. Introduction.

Under the Land Registration Act 1925, all registered land was, unless under the provisions of that Act the contrary was expressed on the register, deemed to be subject to such of a number of specified overriding interests as might be for the time being subsisting in reference to it<sup>1</sup>.

The Land Registration Act 2002 amends the law with regard to overriding interests in a number of respects<sup>2</sup>. The term 'overriding interests' is not employed because such interests are now divided into two distinct lists: unregistered interests which override first registration, set out in Schedule 1 to the Act<sup>3</sup>; and unregistered interests which override registered dispositions, set out in Schedule 3<sup>4</sup>.

With regard to the unregistered interests listed in both Schedule 1 and Schedule 3 to the Land Registration Act 2002, provision is made for the abolition of five of the 14 categories listed at the end of the period of ten years beginning with 13 October 2003<sup>5</sup>. In the interim such interests may be protected, in the case of the interests listed in Schedule 3, by applying for the entry of a notice in the register<sup>6</sup> in respect of any such interest<sup>7</sup>.

Transitional provision is made with regard to former overriding interests<sup>8</sup>.

Applicants for registration of a registrable disposition<sup>9</sup> of a registered estate<sup>10</sup> are now required to give details of any unregistered interests known to them which will override the disposition<sup>11</sup>.

1 See the Land Registration Act 2002 s 70(1) (repealed). See further PARA 863 ante.

2 See PARA 863 ante.

3 See the Land Registration Act 2002 ss 11(4)(b), 12(4)(c), Sch 1; and PARA 863 et seq ante.

4 See *ibid* ss 29(2)(a)(ii), 30(2)(a)(ii), Sch 3; and PARA 962 post.

5 See *ibid* s 117(1); and PARA 963 post.

6 As to notices see PARA 995 et seq post.

7 See the Land Registration Act 2002 s 117(2); and PARA 963 post.

8 See *ibid* Sch 12 paras 8-13; and PARA 962 post.

9 As to registrable dispositions see PARA 911 et seq ante.

10 For the meaning of 'registered estate' see PARA 861 note 3 ante.

11 See the Land Registration Act 2002 s 71; and PARA 961 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(vi) Unregistered  
Interests which override Registered Dispositions/961. Duty to disclose unregistered interests.

### **961. Duty to disclose unregistered interests.**

Where rules<sup>1</sup> so provide, a person applying to register a registrable disposition<sup>2</sup> of a registered estate<sup>3</sup> must provide to the Chief Land Registrar<sup>4</sup> such information as the rules may provide about any unregistered interest affecting the estate<sup>5</sup> which falls within any of the specified categories of unregistered interests overriding registered dispositions<sup>6</sup> and is of a description specified by the rules<sup>7</sup>.

1 See the Land Registration Rules 2003, SI 2003/1417, r 28; and PARA 832 ante. As to land registration rules generally see PARA 1125 post.

2 As to registrable dispositions see PARA 911 et seq ante.

3 For the meaning of 'registered estate' see PARA 861 note 3 ante.

4 As to the Chief Land Registrar see PARA 1066 post.

5 For the meaning of 'interest affecting the estate' see PARA 835 note 8 ante.

6 I.e. which falls within any of the paragraphs of the Land Registration Act 2002 ss 29(2)(a)(ii), 30(2)(a)(ii), Sch 3: see PARA 962 post.

7 Ibid s 71(b).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(vi) Unregistered  
Interests which override Registered Dispositions/962. Specified interests overriding registered  
dispositions.

### **962. Specified interests overriding registered dispositions.**

The unregistered interests which may override a registered disposition are:

189 (1) a leasehold estate in land<sup>1</sup> granted for a term not exceeding seven years<sup>2</sup>  
from the date of the grant<sup>3</sup>, except for a lease the grant of which is the grant:

17

33. (a) out of a qualifying estate<sup>4</sup> of an estate in land for a term of years absolute<sup>5</sup>  
to take effect in possession after the end of the period of three months beginning  
with the date of the grant<sup>6</sup>;

34. (b) the grant of a lease in pursuance of Part V of the Housing Act 1985 out of  
an unregistered legal estate in land<sup>7</sup>; or

35. (c) the grant of a lease out of an unregistered legal estate in land in  
circumstances where there is a disposal by a landlord which leads to a person no  
longer being a secure tenant<sup>8</sup>,

18

190 or the grant of which constitutes a registrable disposition<sup>9</sup>;

191 (2) an interest belonging at the time of the disposition to a person in actual occupation<sup>10</sup>, so far as relating to land of which he is in actual occupation<sup>11</sup>, except for:

19

36. (a) an interest under a settlement under the Settled Land Act 1925<sup>12</sup>;

37. (b) an interest of a person of whom inquiry was made before the disposition and who failed to disclose the right when he could reasonably have been expected to do so<sup>13</sup>;

38. (c) an interest which belongs to a person whose occupation would not have been obvious on a reasonably careful inspection of the land at the time of the disposition and of which the person to whom the disposition is made does not have actual knowledge at that time<sup>14</sup>;

39. (d) a leasehold estate in land granted to take effect in possession after the end of the period of three months beginning with the date of the grant and which has not taken effect in possession at the time of the disposition<sup>15</sup>;

20

192 (3) an interest which, immediately before 13 October 2003<sup>16</sup>, was an overriding interest under the previous legislation<sup>17</sup> by virtue of a person's receipt of rents and profits, except for an interest of a person of whom inquiry was made before the disposition and who failed to disclose the right when he could reasonably have been expected to do so<sup>18</sup>; but this does not apply to an interest if at any time since 13 October 2003 it has been an interest which, had the previous legislation continued in force, would not have been an overriding interest<sup>19</sup> by virtue of a person's receipt of rents and profits<sup>20</sup>;

193 (4) a legal easement or profit à prendre<sup>21</sup>, except for an easement (or a profit à prendre which is not registered under the Commons Registration Act 1965<sup>22</sup>) which at the time of the disposition is not within the actual knowledge of the person to whom the disposition is made<sup>23</sup> and would not have been obvious on a reasonably careful inspection of the land over which the easement or profit is exercisable<sup>24</sup>, unless the person entitled to the easement or profit proves that it has been exercised in the period of one year ending with the day of the disposition<sup>25</sup> (subject to transitional provisions<sup>26</sup>);

194 (5) a customary right<sup>27</sup>;

195 (6) a public right<sup>28</sup>;

196 (7) a local land charge<sup>29</sup>;

197 (8) an interest in any coal or coal mine, the rights attached to any such interest and the rights of any person under certain provisions<sup>30</sup> of the Coal Industry Act 1994<sup>31</sup>;

198 (9) in the case of land to which title was registered before 1898, rights to mines and minerals<sup>32</sup> (and incidental rights) created before 1898<sup>33</sup>;

199 (10) in the case of land to which title was registered between 1898 and 1925 inclusive, rights to mines and minerals (and incidental rights) created before the date of registration of the title<sup>34</sup>;

200 (11) a franchise<sup>35</sup>, but this will cease to be a specified category at the end of a period of ten years from 13 October 2003<sup>36</sup>;

201 (12) a manorial right<sup>37</sup>, but this will cease to be a specified category at the end of a period of ten years from 13 October 2003<sup>38</sup>;

202 (13) a right to rent which was reserved to the Crown on the granting of any freehold estate (whether or not the right is still vested in the Crown)<sup>39</sup>, but this will cease to be a specified category at the end of a period of ten years from 13 October 2003<sup>40</sup>;

- 203 (14) a non-statutory right in respect of an embankment or sea or river wall<sup>41</sup>, but this will cease to be a specified category at the end of a period of ten years from 13 October 2003<sup>42</sup>;
- 204 (15) a right to payment in lieu of tithe<sup>43</sup>, but this will cease to be a specified category at the end of a period of ten years from 13 October 2003<sup>44</sup>;
- 205 (16) for a period of three years beginning with 13 October 2003, a right to be registered as proprietor of a registered estate held in trust for a person by virtue of provisions of the previous legislation<sup>45</sup> regarding adverse possession<sup>46</sup>; and
- 206 (17) for a period of ten years beginning with 13 October 2003, a right in respect of the repair of a church chancel<sup>47</sup>;
- 207 (18) a paragraph referring to a PPP lease<sup>48</sup> relating to transport in London<sup>49</sup>.

1 As to the meaning of 'land' see PARA 826 note 4 ante.

2 The Lord Chancellor may by order substitute for the term specified in head (1) in the text such shorter term as he thinks fit: Land Registration Act 2002 s 118(1)(h); and see PARA 826 note 6 ante. At the date at which this volume states the law, no such order had been made. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 Ibid ss 29(2)(a)(ii), 30(2)(a)(ii), Sch 3 para 1. Schedule 3 para 1 is to be taken to include an interest which immediately before 13 October 2003 was an overriding interest under the Land Registration Act 1925 s 70(1)(k) (as amended and repealed) (ie a lease granted for a term not exceeding 21 years): Land Registration Act 2002 s 134(2), Sch 12 para 12.

4 For the meaning of 'qualifying estate' see PARA 866 note 4 ante.

5 As to the meaning of 'term of years absolute' see PARA 827 note 15 ante.

6 Ie a lease falling within the Land Registration Act 2002 s 4(1)(d) (see PARA 827 head (4) ante): Sch 3 para 1(a). The grant of such a lease is an event which triggers the requirement of first registration: see PARA 827 ante.

7 Ie a lease falling within ibid s 4(1)(e) (see PARA 827 head (5) ante): Sch 3 para 1(a). The grant of such a lease is an event which triggers the requirement of first registration: see PARA 827 ante. As to the Housing Act 1985 Pt V (ss 118-188) (as amended) (the right to buy) see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1795 et seq.

8 Ie a lease falling within the Land Registration Act 2002 s 4(1)(f) (see PARA 827 head (6) ante): Sch 3 para 1(a). The grant of such a lease is an event which triggers the requirement of first registration: see PARA 827 ante.

9 Ibid Sch 3 para 1(b). As to registrable dispositions see PARA 911 et seq ante.

10 As to the meaning of 'actual occupation' see *Williams and Glyn's Bank v Boland* [1981] AC 487 at 505, [1980] 2 All ER 408 at 413, HL, per Lord Wilberforce ('what is required is physical presence, not some entitlement at law'); and see *Webb v Pollmount Ltd* [1966] Ch 584, [1966] 1 All ER 481 (actual occupation involves the physical possession of the land); *Lloyds Bank plc v Rosset* [1989] Ch 350 at 377, CA, per Nicholls LJ (what constitutes physical presence depends on the nature and state of the property in question and does not require residence) (revsd by HL [1991] 1 AC 107, [1990] 1 All ER 111 without discussing this point); *Kling v Keston Properties Ltd* (1983) 49 P & CR 212 (actual occupation of a garage); *Chhokar v Chhokar* [1984] FLR 313 (actual occupation does not cease merely because the person in question is temporarily excluded, particularly if that exclusion is wrongful). A wife may be in actual occupation in her own right and her presence is not the mere shadow of her husband's: *Williams and Glyn's Bank v Boland* supra. It has been held, however, that children living with parents who were the legal owners were not in actual occupation and were present only because of their parents' occupation: *Hypo-Mortgage Services Ltd v Robinson* [1997] 2 FCR 422, [1997] 2 FLR 71, CA. The occupation of a licensee paying no rent has been held to be the occupation of the licensee and not of the licensor: *Strand Securities Ltd v Caswell* [1965] Ch 958, [1965] 1 All ER 820, CA.

11 Land Registration Act 2002 Sch 3 para 2. Cf the Land Registration Act 1925 s 70(1)(g) (repealed), which included the rights of a person in receipt of the rents and profits of the land although not in actual occupation of it; and see eg *Ferrishurst v Wallcite* [1999] Ch 355, [1999] 1 All ER 977. For transitional provisions see head (3) in the text.

If the title to the legal estate by virtue of which a spouse is entitled to occupy a dwelling-house (including any legal estate held by trustees for that spouse) is registered under the Land Registration Act 2002, a spouse's

matrimonial home rights are not capable of falling within Sch 3 para 2: see the Family Law Act 1996 s 31(10) (amended by the Land Registration Act 2002 s 133, Sch 11 para 34(1), (2)); and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 286.

None of the matters mentioned in the Land Registration Act 2002 s 87(1) (pending land actions etc: see PARA 1019 post) is capable of falling within Sch 3 para 2: s 87(3). Nor are the rights conferred on a person by or under an access order under the Access to Neighbouring Land Act 1992 (see NUISANCE vol 78 (2010) PARA 218) capable of so falling: see s 5(5) (substituted by the Land Registration Act 2002 Sch 11 para 26(1), (4)).

12 Land Registration Act 2002 Sch 3 para 2(a). As to settlements see PARA 893 et seq ante; and SETTLEMENTS. Subject to certain exceptions, no settlement created on or after 1 January 1997 is a settlement for the purposes of the Settled Land Act 1925: see the Trusts of Land and Appointment of Trustees Act 1996 ss 2, 27; and REAL PROPERTY vol 39(2) (Reissue) PARA 65; SETTLEMENTS vol 42 (Reissue) PARA 676.

13 Land Registration Act 2002 Sch 3 para 2(b).

14 Ibid Sch 3 para 2(c). There was no equivalent provision under the previous legislation.

15 Ibid Sch 3 para 2(d).

16 The date mentioned in the text is the date when ibid Sch 3 came into force: see PARA 805 note 1 ante.

17 Ie under the Land Registration Act 1925 s 70(1)(g) (repealed).

18 Land Registration Act 2002 Sch 3 para 2A(1) (Sch 3 para 2A added, for a transitional three-year period, by Sch 12 para 8).

19 See note 17 supra.

20 Land Registration Act 2002 Sch 3 para 2A(2) (as added: see note 18 supra).

21 Ibid Sch 3 para 3. This provision takes effect for a period of three years beginning with 13 October 2003 with the omission of the exception set out in the text: see Sch 12 para 10. Cf the Land Registration Act 1925 s 70(1)(a) (repealed) and the Land Registration Rules 1925, SR & O 1925/1093, r 258 (revoked), which included certain equitable easements. The Land Registration Act 2002 Sch 1 para 3 reverses the previous position as decided in *Celsteel Ltd v Alton House Holdings Ltd* [1985] 2 All ER 562, [1985] 1 WLR 204 (revsd in part [1986] 1 All ER 608, [1986] 1 WLR 512, CA) whereby an equitable right of way openly exercised and enjoyed as appurtenant to the dominant land was an overriding interest. For transitional provisions see note 26 infra. As to easements and profits à prendre see further EASEMENTS AND PROFITS A PRENDRE.

The rights of a qualifying person under the Housing Act 1985 Pt V (as amended) (right to buy: see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1803 et seq) in relation to the qualifying dwelling-house are not to be regarded as falling within the Land Registration Act 2002 Sch 3 para 3, and so are liable to be postponed under s 29 (see PARA 935 ante) unless protected by means of a notice in the register: see the Housing Act 1985 s 171G, Sch 9A para 6(1) (s 171G, Sch 9A added by the Housing and Planning Act 1986 s 8, Sch 2; and the Housing Act 1985 Sch 9A para 6(1) substituted by the Land Registration Act 2002 s 133, Sch 11 para 18(1), (10)); and LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1914.

22 As to registration under the Commons Registration Act 1965 see COMMONS vol 13 (2009) PARA 506 et seq.

23 Land Registration Act 2002 Sch 3 para 3(1)(a). See also Sch 12 para 10; and note 21 supra.

24 Ibid Sch 3 para 3(1)(b). See also Sch 12 para 10; and note 21 supra.

25 Ibid Sch 3 para 3(2).

26 In relation to an easement or profit à prendre which was an overriding interest in relation to a registered estate immediately before 13 October 2003 (ie the date on which Sch 3 came into force: see PARA 805 note 1 ante), but which would not fall within Sch 3 para 3 if created after that date, Sch 3 has effect as if the interest were not excluded from Sch 3 para 3: Sch 12 para 9(1), (2).

27 Ibid Sch 3 para 4. Cf the Land Registration Act 1925 s 70(1)(a) (repealed). For examples of customary rights see *Goodman v Mayor of Saltash* (1882) 7 App Cas 633 (fishing for oysters); *Wyld v Silver* [1963] Ch 243 (holding a fair or wake); *Peggs v Lamb* [1994] Ch 172 (grazing of animals on common land); and see CUSTOM AND USAGE.

28 Land Registration Act 2002 Sch 3 para 5. Cf the Land Registration Act 1925 s 70(1)(a) (repealed). As to public rights see *Overseas Investment Services Ltd v Simcobuild Construction Ltd* (1995) 70 P & CR 322, CA (public rights are rights: (1) exercisable by anyone, whether he owns land or not, merely by virtue of the



general law; and (2) presently exercisable, but not rights that might become exercisable in future); and see eg *Secretary of State for the Environment, Transport and the Regions v Baylis (Gloucester) Ltd* (2000) 80 P & CR 324 ('public rights' include a fee simple vested in a highway authority in respect of a dedicated highway).

29 Land Registration Act 2002 Sch 3 para 6. Cf the Land Registration Act 1925 s 70(1)(i) (repealed). As to local land charges see LAND CHARGES vol 26 (2004 Reissue) PARA 671 et seq. The Land Registration Act 2002 Sch 3 para 6 must be taken to include an interest which immediately before 13 October 2003 (ie the date on which Sch 3 came into force: see PARA 805 note 1 ante) was an overriding interest under the Land Registration Act 1925 s 70(1)(i) (repealed) and whose status as such was preserved by the Local Land Charges Act 1975 s 19(3) (transitional provision in relation to change in definition of 'local land charge': see LAND CHARGES vol 26 (2004 Reissue) PARA 672): Land Registration Act 2002 Sch 12 para 13.

A charge over registered land which is a local land charge may only be realised if the title to the charge is registered: see the Land Registration Act 2002 s 55; and PARA 949 ante. Such registration is quite distinct from the general requirements as to registration of local land charges (whether or not they affect registered land) under the Local Land Charges Act 1975: see LAND CHARGES vol 26 (2004 Reissue) PARA 671 et seq.

30 Ie rights under the Coal Industry Act 1994 s 38 (rights to withdraw support: see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 178 et seq), s 49 (rights to work coal in former copyhold land: see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 400 et seq) or s 51 (additional rights in relation to underground land: see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 399): Land Registration Act 2002 Sch 3 para 7.

31 Ibid Sch 3 para 7. Cf the Land Registration Act 1925 s 70(1)(m) (repealed).

32 As to the meaning of 'mines and minerals' see PARA 826 note 4 ante.

33 Land Registration Act 2002 Sch 3 para 8. The effect of the Land Transfer Act 1875 s 18 (repealed), and the Land Transfer Act 1897 s 18, Sch 1 (repealed), is preserved by this provision in relation to mines and minerals in respect of pre-1898 registrations. Cf the Land Registration Act 1925 s 70(1)(l) (repealed).

34 Land Registration Act 2002 Sch 3 para 9. The effect of the Land Transfer Act 1875 s 18 (repealed), and the Land Transfer Act 1897 s 18, Sch 1 (repealed), is preserved by this provision in relation to mines and minerals in respect of pre-1926 registrations. Cf the Land Registration Act 1925 s 70(1)(l) (repealed).

35 Land Registration Act 2002 Sch 3 para 10. Cf the Land Registration Act 1925 s 70(1)(j) (repealed). As to franchises see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 8.42.

36 See the Land Registration Act 2002 s 117(1); and PARA 963 post.

37 Ibid Sch 3 para 11. Cf the Land Registration Act 1925 s 70(1)(j) (repealed). As to the meaning of 'manorial rights' see the Law of Property Act 1922 Sch 12 paras 5, 6 (repealed); and *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 8.41. See also CUSTOM AND USAGE.

38 See note 36 supra.

39 Land Registration Act 2002 Sch 3 para 12. Cf the Land Registration Act 1925 s 70(1)(b) (repealed). As to Crown rents see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 8.43. See also CROWN PROPERTY.

40 See note 36 supra.

41 Land Registration Act 2002 Sch 3 para 13. Cf the Land Registration Act 1925 s 70(1)(d) (repealed). As to the nature of such non-statutory rights see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 8.45. Cf a statutory liability in respect of an embankment or sea wall which is a liability under the general law.

42 See note 36 supra.

43 Land Registration Act 2002 Sch 3 para 14. Cf the Land Registration Act 1925 s 70(1)(e) (repealed). The only surviving class of such right is the right to payment of 'corn rents' which are no longer collected by the Church Commissioners but may in some cases be payable to, and collected by, other persons: see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 8.46.

44 See note 36 supra.

45 Ie the Land Registration Act 1925 s 75(1) (repealed).

46 Land Registration Act 2002 Sch 3 para 15 (added by Sch 12 para 11). This provision has effect for the period of three years beginning with the day on which Sch 3 came into force (ie 13 October 2003): see Sch 12 para 11. The right referred to in head (16) in the text is a right under Sch 12 para 18(1) (see PARA 1024 post).

47 Ibid Sch 3 para 16 (added by the Land Registration Act 2002 (Transitional Provisions) (No 2) Order 2003, SI 2003/2431, art 2). See also PARA 863 ante.

48 For the meaning of 'PPP lease' see PARA 826 note 11 ante.

49 Land Registration Act 2002 s 90(5), which provides that Sch 3 has effect as if it included a paragraph referring to a PPP lease. Cf the Land Registration Act 1925 s 70(1)(kk) (repealed).

## UPDATE

### 962 Specified interests overriding registered dispositions

NOTE 11--Family Law Act 1996 s 31(10) further amended so as to apply provisions to civil partners: Civil Partnership Act 2004 Sch 9 para 2(10). See also *Bank of Scotland v Hussain* [2008] All ER (D) 235 (Mar) (decided under Land Registration Act 1925 s 70(1)(g)).

TEXT AND NOTE 22--Now refers to Commons Act 2006 Pt 1 (ss 1-25): 2002 Act Sch 3 para 3 (amended by Commons Act 2006 Sch 5 para 8(4) (not yet in force)).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(2) REGISTRABLE DISPOSITIONS/(vi) Unregistered Interests which override Registered Dispositions/963. Protection of unregistered interests which will no longer override registered dispositions at the end of the specified ten-year period.

### 963. Protection of unregistered interests which will no longer override registered dispositions at the end of the specified ten-year period.

Certain miscellaneous unregistered interests<sup>1</sup> will no longer override registered dispositions at the end of the period of ten years beginning with 13 October 2003<sup>2</sup>. They may, however, be protected by the lodging of an application for the entry in the register<sup>3</sup> of a notice in respect of them<sup>4</sup>.

If made before the end of the specified ten-year period, no fee may be charged for an application for the entry in the register of a notice in respect of such an interest<sup>5</sup>.

1 ie unregistered interests falling within the Land Registration Act 2002 ss 29(2)(a)(ii), 30(2)(a)(ii), Sch 3 paras 10-14: see PARA 962 heads (11)-(15) ante.

2 Ibid s 117(1).

3 As to the register of title see PARA 811 et seq ante.

4 As to notices in the register see PARA 995 et seq post.

5 Land Registration Act 2002 s 117(2)(b). As to fees see PARA 1071 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(3) MATTERS RELATING TO TITLE/(i) Proof and Perfection of Title/964. Introduction.

### **(3) MATTERS RELATING TO TITLE**

#### **(i) Proof and Perfection of Title**

##### **964. Introduction.**

The Land Registration Act 1925 made specific provision regarding the method by which title to registered land was to be proved<sup>1</sup>.

There are no similar express provisions made by the Land Registration Act 2002<sup>2</sup>, which instead, contains a power to make rules about the obligations with respect to proof of title or perfection of title<sup>3</sup>.

1 See the Land Registration Act 1925 s 110 (repealed).

2 For an explanation of the rationale behind this change see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARAS 12.5-12.8.

3 See the Land Registration Act 2002 s 126, Sch 10 para 2; and PARA 965 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(3) MATTERS RELATING TO TITLE/(i) Proof and Perfection of Title/965. Power to make rules regulating title matters between sellers and buyers.

##### **965. Power to make rules regulating title matters between sellers and buyers.**

Rules<sup>1</sup> may make provision about the obligations with respect to:

- 208 (1) proof of title; or
- 209 (2) perfection of title,

of the seller under a contract for the transfer, or other disposition, for valuable consideration<sup>2</sup> of a registered estate<sup>3</sup> or charge<sup>4</sup>. Rules so made may be expressed to have effect notwithstanding any stipulation to the contrary<sup>5</sup>.

1 As to land registration rules generally see PARA 1125 post.

2 As to the meaning of 'valuable consideration' see PARA 827 note 7 ante.

3 For the meaning of 'registered estate' see PARA 861 note 3 ante.

4 Land Registration Act 2002 s 126, Sch 10 para 2(1). For the meaning of 'registered charge' see PARA 861 note 8 ante.

5 Ibid Sch 10 para 2(2).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(3) MATTERS RELATING TO TITLE/(i) Proof and Perfection of Title/966. Statutory commencements of title under the Law of Property Act 1925 inapplicable in relation to registered land.

**966. Statutory commencements of title under the Law of Property Act 1925 inapplicable in relation to registered land.**

Nothing in the provisions of the Law of Property Act 1925 with regard to the 15-year period of commencement of title which a purchaser of land may require<sup>1</sup> applies in relation to registered land or to a term of years to be derived out of registered land<sup>2</sup>.

The position where a registrable lease is to be granted out of unregistered land is dealt with elsewhere in this title<sup>3</sup>.

1     le nothing in the provisions of the Law of Property Act 1925 s 44 (as amended): see SALE OF LAND vol 42 (Reissue) PARAS 139-140.

2     Law of Property Act 1925 s 44(12) (added by the Land Registration Act 2002 s 133, Sch 11 para 2(1), (4)).

3     See PARA 838 ante.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(3) MATTERS RELATING TO TITLE/(ii) Covenants for Title/967. Positive covenants.

**(ii) Covenants for Title**

**967. Positive covenants.**

The Chief Land Registrar<sup>1</sup> may make an appropriate entry in the proprietorship register<sup>2</sup> of any positive covenant that relates to a registered estate<sup>3</sup> given by the proprietor or any previous proprietor of that estate<sup>4</sup>. If it appears to the registrar that a covenant referred to in such an entry does not bind the current proprietor of the registered estate, he must remove the entry<sup>5</sup>.

1     As to the Chief Land Registrar see PARA 1066 post.

2     For the meaning of 'proprietorship register' see PARA 815 note 1 ante.

3     For the meaning of 'registered estate' see PARA 861 note 3 ante.

4     Land Registration Rules 2003, SI 2003/1417, r 64(1). Any such entry must, where practicable, refer to the instrument that contains the covenant: r 64(2).

5     Ibid r 64(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(3) MATTERS RELATING TO TITLE/(ii) Covenants for Title/968. Indemnity covenants.

**968. Indemnity covenants.**

The Chief Land Registrar<sup>1</sup> may make an appropriate entry in the proprietorship register<sup>2</sup> of an indemnity covenant given by the proprietor of a registered estate<sup>3</sup> in respect of any restrictive covenant or other matter that affects that estate or in respect of a positive covenant that

relates to that estate<sup>4</sup>. If it appears to the registrar that a covenant referred to in such an entry does not bind the current proprietor of the registered estate, he must remove the entry<sup>5</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 For the meaning of 'proprietorship register' see PARA 815 note 1 ante.

3 For the meaning of 'registered estate' see PARA 861 note 3 ante.

4 Land Registration Rules 2003, SI 2003/1417, r 65(1). Any such entry must, where practicable, refer to the instrument that contains the indemnity covenant: r 65(2).

5 Ibid r 65(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(3) MATTERS RELATING TO TITLE/(ii) Covenants for  
Title/969. Introduction of implied covenants.

## 969. Introduction of implied covenants.

A registrable disposition may be expressed to be made either with full title guarantee or with limited title guarantee<sup>1</sup> and the use of these expressions will imply on the part of the person making the disposition such of the covenants specified in the Law of Property (Miscellaneous Provisions) Act 1994<sup>2</sup> as are applicable to the disposition<sup>3</sup>. In certain cases a registrable disposition may be one in which the implied covenants are in the old form under the Law of Property Act 1925<sup>4</sup>. Covenants under the Law of Property Act 1925 may also be implied in a disposition subject to a rentcharge<sup>5</sup>.

1 Land Registration Rules 2003, SI 2003/1417, r 67(1). In the case of a disposition which is effected by an instrument in the Welsh language, the appropriate Welsh expression specified in the Law of Property (Miscellaneous Provisions) Act 1994 s 8(4) may be used instead: Land Registration Rules 2003, SI 2003/1417, r 67(1).

2 The covenants specified in the Law of Property (Miscellaneous Provisions) Act 1994 ss 2-5: see SALE OF LAND vol 42 (Reissue) PARAS 349-351.

3 Ibid s 1(1), (2).

4 Dispositions made before 1 July 1995 continue to be governed by the old law; dispositions made on or after that date are in general governed by the Law of Property (Miscellaneous Provisions) Act 1994: see SALE OF LAND vol 42 (Reissue) PARA 337. However, the Law of Property Act 1925 s 76 (repealed by the Law of Property (Miscellaneous Provisions) Act 1994 ss 10(1), 21(2), (3), Sch 2 as regards dispositions of property made on or after 1 July 1995) applies in relation to a disposition of property made after 1 July 1995 in pursuance of a contract entered into before that date where: (1) the contract contains a term providing for a disposition to which the Law of Property Act 1925 s 76 (repealed) would have applied if the disposition had been made before commencement; and (2) the existence of the contract and of that term is apparent on the face of the instrument effecting the disposition, unless there has been an intervening disposition of the property expressed, in accordance with the Law of Property (Miscellaneous Provisions) Act 1994 Pt I (ss 1-13) (as amended), to be made with full title guarantee: see s 11(1); and SALE OF LAND vol 42 (Reissue) PARAS 337, 349.

In the case of a registrable disposition to which the Law of Property Act 1925 s 76 (repealed) applies by virtue of the Law of Property (Miscellaneous Provisions) Act 1994 s 11(1), a person may be expressed to execute, transfer or charge as beneficial owner, settlor, trustee, mortgagee, or personal representative of a deceased person or under an order of the court, and the instrument effecting the disposition may be framed accordingly: Land Registration Rules 2003, SI 2003/1417, r 67(2)(a). Any covenant implied by virtue of the Law of Property Act 1925 s 76 (repealed) in such a disposition will take effect as though the disposition was expressly made subject to: (a) all charges and other interests appearing or protected on the register at the time of the execution of the disposition and affecting the title of the covenantor; (b) any of the matters falling within the Land Registration Act 2002 ss 29(2)(a)(ii), 30(2)(a)(ii), Sch 3 (unregistered interests which override registered

dispositions: see PARA 962 ante) of which the purchaser has notice and subject to which it would have taken effect had the land been unregistered: Land Registration Rules 2003, SI 2003/1417, r 67(2)(b). The benefit of any covenant implied under the Law of Property Act 1925 s 76 (repealed), s 77 (as amended) or either of them will, on and after the registration of the disposition in which it is implied, be annexed and incident to and will go with the registered proprietorship of the interest for the benefit of which it is given and will be capable of being enforced by the proprietor for the time being of that interest: Land Registration Rules 2003, SI 2003/1417, r 67(3). The provisions of r 67(2)(b), (3) are in addition to and not in substitution for the other provisions relating to covenants contained in the Law of Property Act 1925: Land Registration Rules 2003, SI 2003/1417, r 67(4).

5 See the Law of Property Act 1925 s 77 (as amended); and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 776.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(3) MATTERS RELATING TO TITLE/(ii) Covenants for Title/970. Power to make rules in relation to implied covenants.

### **970. Power to make rules in relation to implied covenants.**

Rules<sup>1</sup> may:

- 210 (1) make provision about the form of provisions extending or limiting any covenant implied by virtue of Part I of the Law of Property (Miscellaneous Provisions) Act 1994<sup>2</sup> on a registrable disposition<sup>3</sup>;
- 211 (2) make provision about the application of the provision of the Law of Property Act 1925 dealing with implied covenants in conveyances subject to rents<sup>4</sup> to transfers of registered estates<sup>5</sup>;
- 212 (3) make provision about reference in the register<sup>6</sup> to implied covenants, including provision for the state of the register to be conclusive in relation to whether covenants have been implied<sup>7</sup>.

1 As to land registration rules generally see PARA 1125 post.

2 I.e. the provisions of the Law of Property (Miscellaneous Provisions) Act 1994 Pt I (ss 1-13) (as amended) (implied covenants for title): see SALE OF LAND vol 42 (Reissue) PARAS 349-351.

3 Land Registration Act 2002 s 126, Sch 10 para 3(a). See the Land Registration Rules 2003, SI 2003/1417, r 68; and PARA 972 post.

4 I.e. the Law of Property Act 1925 s 77 (as amended): see RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 776.

5 Land Registration Act 2002 Sch 10 para 3(b). See the Land Registration Rules 2003, SI 2003/1417, r 69; and PARA 975 post.

6 As to the register of title see PARA 811 et seq ante.

7 Land Registration Act 2002 Sch 10 para 3(c). See the Land Registration Rules 2003, SI 2003/1417, r 67(5), (6); and PARA 971 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(3) MATTERS RELATING TO TITLE/(ii) Covenants for Title/971. When reference to implied covenants may be made in the register.

### **971. When reference to implied covenants may be made in the register.**

A reference may be made in the register<sup>1</sup> where a registrable disposition<sup>2</sup> of leasehold land limits or extends the covenant as to the validity of the lease implied<sup>3</sup> under the Law of Property (Miscellaneous Provisions) Act 1994<sup>4</sup>. Subject to that, no reference to any covenant implied by virtue of Part I of that Act<sup>5</sup>, or implied under the old law<sup>6</sup>, is to be made in the register<sup>7</sup>.

1 As to the register of title see PARA 811 et seq ante.

2 As to registrable dispositions see PARA 911 et seq ante.

3 Ie the covenant implied under the Law of Property (Miscellaneous Provisions) Act 1994 s 4: see SALE OF LAND vol 42 (Reissue) PARA 99.

4 Land Registration Rules 2003, SI 2003/1417, r 67(6).

5 Ie implied by virtue of the Law of Property (Miscellaneous Provisions) Act 1994 Pt I (ss 1-13) (as amended) (implied covenants for title): see SALE OF LAND vol 42 (Reissue) PARAS 349-351.

6 Ie implied by the Law of Property Act 1925 s 76, as applied by the Law of Property (Miscellaneous Provisions) Act 1994 s 11(1): see PARA 969 ante; and SALE OF LAND vol 42 (Reissue) PARAS 337, 349.

7 Land Registration Rules 2003, SI 2003/1417, r 67(5).

## UPDATE

### 971 When reference to implied covenants may be made in the register

NOTE 4--SI 2003/1417 r 67(6) amended: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2. DISPOSITIONS OF REGISTERED LAND/(3) MATTERS RELATING TO TITLE/(ii) Covenants for Title/972. Additional provisions as to implied covenants.

### 972. Additional provisions as to implied covenants.

A document effecting a registrable disposition<sup>1</sup> which contains a provision limiting or extending any covenant implied by virtue of Part I of the Law of Property (Miscellaneous Provisions) Act 1994<sup>2</sup> must include a statement in one of the prescribed forms<sup>3</sup> referring to the provision of that Act in which the covenant is set out<sup>4</sup>.

1 As to registrable dispositions see PARA 911 et seq ante.

2 Ie implied by virtue of the Law of Property (Miscellaneous Provisions) Act 1994 Pt I (ss 1-13) (as amended) (implied covenants for title): see SALE OF LAND vol 42 (Reissue) PARAS 349-351.

3 The statement required by the Land Registration Rules 2003, SI 2003/1417, r 68(2) must be in one of the following forms:

22 (1) 'The covenant set out in section (*number*) of the Law of Property (Miscellaneous Provisions) Act 1994 shall [not] extend to . . . . .'; or

23 (2) 'The [transferor or lessor] shall not be liable under any of the covenants set out in section (*number*) of the Law of Property (Miscellaneous Provisions) Act 1994'.

4 Land Registration Rules 2003, SI 2003/1417, r 68(1).

## UPDATE

## **972 Additional provisions as to implied covenants**

TEXT AND NOTES--SI 2003/1417 r 68 substituted: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(3) MATTERS RELATING TO TITLE/(ii) Covenants for  
Title/973. Exclusion of liability under covenants in certain cases.

### **973. Exclusion of liability under covenants in certain cases.**

The Law of Property (Miscellaneous Provisions) Act 1994 provides that a person making a disposition is not liable under certain covenants implied by virtue of provisions relating to the right to dispose<sup>1</sup>, charges, incumbrances and third party rights<sup>2</sup>, or the validity of the lease<sup>3</sup>, in respect of any particular matter to which the disposition is expressly made subject<sup>4</sup>. Nor is that person liable under any of those covenants for anything, not falling within the above provision, which at the time of the disposition is within the actual knowledge of the person to whom the disposition is made<sup>5</sup>, or which is a necessary consequence of facts that are then within the actual knowledge of the person to whom the disposition is made<sup>6</sup>.

Furthermore, where the disposition is of an interest the title to which is registered under the Land Registration Act 2002, the person making the disposition is not liable under any of those covenants for anything not falling within the above provisions which at the time of the disposition was entered in relation to that interest in the register of title under that Act<sup>7</sup>.

1    Ie the covenants implied by virtue of the Law of Property (Miscellaneous Provisions) Act 1994 s 2(1)(a): see SALE OF LAND vol 42 (Reissue) PARA 349.

2    Ie the covenants implied by virtue of *ibid* s 3: see SALE OF LAND vol 42 (Reissue) PARA 349.

3    Ie the covenants implied by virtue of *ibid* s 4: see SALE OF LAND vol 42 (Reissue) PARAS 99, 350.

4    *Ibid* s 6(1).

5    *Ibid* s 6(2)(a). For this purpose, the Law of Property Act 1925 s 198 (as amended) (deemed notice by virtue of registration: see EQUITY vol 16(2) (Reissue) PARA 577; LAND CHARGES vol 26 (2004 Reissue) PARA 616) is to be disregarded: Law of Property (Miscellaneous Provisions) Act 1994 s 6(3).

6    *Ibid* s 6(2)(b). See also note 5 *supra*.

7    *Ibid* s 6(4) (added by the Land Registration Act 2002 s 133, Sch 11 para 31(1), (2)). Cf the Land Registration Rules 1925, SR & O 1925/1093, r 77A(2) (revoked).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(3) MATTERS RELATING TO TITLE/(ii) Covenants for  
Title/974. Implied indemnity covenants on transfers of pre-1996 leases.

### **974. Implied indemnity covenants on transfers of pre-1996 leases.**

The provisions described below do not apply to a lease which is a new tenancy<sup>1</sup> for the purposes of the Landlord and Tenant (Covenants) Act 1995<sup>2</sup>. Thus they do not apply to a tenancy granted on or after 1 January 1996 unless it was granted in pursuance of an agreement entered into, or a court order made, before that date<sup>3</sup>. On a disposition of a



registered leasehold estate<sup>4</sup> by way of transfer to which these provisions apply, the following covenants are implied in the instrument effecting the disposition, unless the contrary intention is expressed<sup>5</sup>.

In the case of a transfer of the whole of the land<sup>6</sup> comprised in the registered lease, there is implied on the part of the transferee a covenant with the transferor that during the residue of the term granted by the registered lease the transferee and the persons deriving title under him will:

- 213 (1) pay the rent reserved by the lease;
- 214 (2) comply with the covenants and conditions contained in the lease; and
- 215 (3) keep the transferor and the persons deriving title under him indemnified against all actions, expenses and claims on account of any failure to comply with heads (1) and (2) above<sup>7</sup>.

In the case of a transfer of part of the land comprised in the lease, there is implied on the part of the transferee a covenant with the transferor that during the residue of the term granted by the registered lease the transferee and the persons deriving title under him will:

- 216 (a) where the rent reserved by the lease is apportioned, pay the rent apportioned to the part transferred;
- 217 (b) comply with the covenants and conditions contained in the lease so far as affecting the part transferred; and
- 218 (c) keep the transferor and the persons deriving title under him indemnified against all actions, expenses and claims on account of any failure to comply with heads (a) and (b) above<sup>8</sup>.

Finally, in the case of a transfer of part of the land comprised in the lease where the transferor continues to hold land under the lease, there is implied on the part of the transferor a covenant with the transferee that during the residue of the term granted by the registered lease the transferor and the persons deriving title under him will:

- 219 (i) where the rent reserved by the lease is apportioned, pay the rent apportioned to the part retained;
- 220 (ii) comply with the covenants and conditions contained in the lease so far as affecting the part retained; and
- 221 (iii) keep the transferee and the persons deriving title under him indemnified against all actions, expenses and claims on account of any failure to comply with heads (i) and (ii) above<sup>9</sup>.

Where a transfer of a registered leasehold estate which is an old tenancy<sup>10</sup> modifies or negatives any covenants implied by heads (1) to (3) or heads (a) to (c) above, an entry that the covenants have been so negated or modified must be made in the register<sup>11</sup>.

1     le a new tenancy for the purposes of the Landlord and Tenant (Covenants) Act 1995 s 1: see the text and note 3 infra; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 578.

2     Land Registration Act 2002 s 134, Sch 12 para 20(5).

3     See the Landlord and Tenant (Covenants) Act 1995 s 1(3); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 578.

4     For the meaning of 'registered estate' see PARA 861 note 3 ante.

5 Land Registration Act 2002 Sch 12 para 20(1). As to the interpretation of these covenants as they were set out in the Land Registration Act 1925 see *Scottish and Newcastle plc v Raguz* [2003] EWCA Civ 1070, [2003] All ER (D) 418 (Jul).

6 As to the meaning of 'land' see PARA 826 note 4 ante.

7 Land Registration Act 2002 Sch 12 para 20(1)(a), (2).

8 Ibid Sch 12 para 20(1)(b)(i), (3).

9 Ibid Sch 12 para 20(1)(b)(ii), (4).

10 'Old tenancy' means a tenancy as defined in the Landlord and Tenant (Covenants) Act 1995 s 28 which is not a new tenancy as defined in s 1: Land Registration Rules 2003, SI 2003/1417, r 217(1). See further LANDLORD AND TENANT.

11 Ibid r 66.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/2.  
DISPOSITIONS OF REGISTERED LAND/(3) MATTERS RELATING TO TITLE/(ii) Covenants for Title/975. Implied covenants on transfers of land subject to rentcharges.

### **975. Implied covenants on transfers of land subject to rentcharges.**

On a transfer of a registered estate<sup>1</sup> subject to a rentcharge<sup>2</sup>, covenants may be implied under the Law of Property Act 1925<sup>3</sup>. Certain of the covenants implied by that Act<sup>4</sup> may be modified or negated, and any covenant included in the transfer may be modified, by adding suitable words to the transfer<sup>5</sup>.

1 For the meaning of 'registered estate' see PARA 861 note 3 ante.

2 As to the phasing out of many rentcharges under the Rentcharges Act 1977, and the limited circumstances in which new rentcharges may be created, see RENTCHARGES AND ANNUITIES.

3 See the Law of Property Act 1925 s 77(1)(A), (B), Sch 2 Pts VII, VIII (as amended). After 1 February 1978, where the rent is a rentcharge created after 22 July 1977, there are to be implied in any transfer of the land affected, in addition to the covenants implied under the Law of Property (Miscellaneous Provisions) Act 1994 Pt I (ss 1-13) (as amended), further covenants by the transferor as to payment of the rentcharge and as to the furnishing of evidence to the grantee in the event of the rentcharge ceasing to affect the land transferred: see the Rentcharges Act 1977 s 11 (as amended); and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 776. Where the covenants set out in the Law of Property Act 1925 Sch 2 Pt VII or Pt VIII are included in a transfer, the references to 'the grantees', 'the conveyance' and 'the conveying parties' are to be treated as references to the transferees, the transfer and the transferors respectively: Land Registration Rules 2003, SI 2003/1417, r 69(1).

Where, in a transfer, part of a registered estate affected by a rentcharge is, without the consent of the owner of the rentcharge, expressed to be transferred exonerated from the entire rent, and the covenants in the Law of Property Act 1925 Sch 2 Pt VIII para (ii) are included, Sch 2 Pt VIII para (ii) is to apply as if any reference to the balance of the rent were to the entire rent and the words 'other than the covenant to pay the entire rent' were omitted: Land Registration Rules 2003, SI 2003/1417, r 69(2). Where, in a transfer to which the Law of Property Act 1925 s 77(1)(B) does not apply, part of a registered estate affected by a rentcharge is, without the consent of the owner of the rentcharge, expressed to be transferred subject to or charged with the entire rent, and the covenants in the Law of Property Act 1925 Sch 2 Pt VIII para (i) are included, Sch 2 Pt VIII para (i) is to apply as if any reference to the apportioned rent were to the entire rent and the words 'other than the covenant to pay the entire rent' were omitted: Land Registration Rules 2003, SI 2003/1417, r 69(3).

4 If any covenant implied by the Law of Property Act 1925 s 77(1)(A) (covenant by the transferee or joint and several covenants by the transferees, if more than one, with the transferors and with each of them, if more than one, in the terms set out in Sch 2 Pt VII) or by s 77(1)(B)(i) (covenant by the transferee of the land or joint and several covenants by the transferees, if more than one, with the transferors and with each of them, if more than one, in the terms set out in Sch 2 Pt VIII para (i)): Land Registration Rules 2003, SI 2003/1417, r 69(1), (4) (a).

5 Ibid r 69(4)(a), (b).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/3. ALTERATION OF THE REGISTER AND INDEMNITIES/(1) ALTERATION OF THE REGISTER/(i) In general/976. Introduction.

### **3. ALTERATION OF THE REGISTER AND INDEMNITIES**

#### **(1) ALTERATION OF THE REGISTER**

##### **(i) In general**

##### **976. Introduction.**

Under the Land Registration Act 1925, the term 'rectification' was used to describe a number of situations in which the register<sup>1</sup> might be altered<sup>2</sup>. The power to rectify, or order rectification, was always discretionary<sup>3</sup>. Alterations to the register made for some reason other than one of the statutory grounds were not 'rectification' but the distinction between rectification and other alteration was not explicitly made<sup>4</sup>.

The Land Registration Act 2002 changes this terminology<sup>5</sup>. It makes provision for 'alteration' of the register on a number of grounds<sup>6</sup>, and employs a narrower concept of 'rectification' which is defined as a particular form of alteration directly linked to the circumstances in which an indemnity is payable<sup>7</sup>. 'Rectification'<sup>8</sup> means an alteration which involves the correction of a mistake<sup>9</sup> and prejudicially affects the title<sup>10</sup> of a registered<sup>11</sup> proprietor<sup>12</sup>. The statutory powers<sup>13</sup> to alter the register, so far as relating to rectification, extend to changing for the future the priority of any interest affecting the registered estate or charge concerned<sup>14</sup>.

Separate provision is made for alterations to the register of cautions against first registration<sup>15</sup>.

Improper alteration of the registers is an offence<sup>16</sup>.

1 As to the register of title see PARA 811 et seq ante.

2 The situations where the register might be altered were as follows:

- 24 (1) where a court of competent jurisdiction had decided that any person was entitled to any estate, right or interest in or to any registered land or charge, and as a consequence of that decision the court was of opinion that a rectification of the register was required, and made an order to that effect (Land Registration Act 1925 s 82(1)(a) (repealed), subject to any express provisions in the Act to the contrary);
- 25 (2) where the court, on the application in the prescribed manner of any person who was aggrieved by any entry made in, or by the omission of any entry from, the register, or by any default being made, or unnecessary delay taking place, in the making of any entry in the register, made an order for the rectification of the register (s 82(1)(b) (repealed), subject to any express provisions in the Act to the contrary);
- 26 (3) in any case and at any time with the consent of all persons interested (s 82(1)(c) (repealed));
- 27 (4) where the court or the registrar was satisfied that any entry in the register had been obtained by fraud (s 82(1)(d) (repealed));
- 28 (5) where two or more persons were, by mistake, registered as proprietors of the same registered estate or of the same charge (s 82(1)(e) (repealed));

- 29 (6) where a mortgagee had been registered as proprietor of the land instead of as proprietor of a charge and a right of redemption was subsisting (s 82(1)(f) (repealed));
- 30 (7) where a legal estate had been registered in the name of a person who if the land had not been registered would not have been the estate owner (s 82(1)(g) (repealed)); and
- 31 (8) in any other case where, by reason of any error or omission in the register or by reason of any entry made under a mistake, it might be deemed just to rectify the register (s 82(1)(h) (repealed)).

In regard to head (4) supra and as to the exercise of the discretion to rectify where a deed was void or voidable see *Argyle Building Society v Hammond* (1984) 49 P & CR 148, CA; *Norwich and Peterborough Building Society v Steed (No 2)* [1993] Ch 116, [1993] 1 All ER 330, CA. See also *Ahmed v Kendrick and Ahmed* [1988] 2 FLR 22, (1987) 56 P & CR 120; *Kingsalton Ltd v Thames Water Developments Ltd* [2001] EWCA Civ 20, [2002] 1 P & CR 184; *Buckinghamshire County Council v Briar* [2002] EWHC 2821 (Ch), [2002] All ER (D) 355 (Dec). In regard to head (7) supra see eg *Bridges v Mees* [1957] Ch 475, [1957] 2 All ER 577; *Epps v Esso Petroleum Co Ltd* [1973] 2 All ER 465, [1973] 1 WLR 1071. In regard to head (8) supra see *Re Dances Way, West Town, Hayling Island* [1962] Ch 490, [1962] 2 All ER 42, CA; *Epps v Esso Petroleum Co Ltd* supra.

3 See *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 10.1; and see eg *Re Sea View Gardens, Claridge v Tingey* [1966] 3 All ER 935, [1967] 1 WLR 134; *Epps v Esso Petroleum Co Ltd* [1973] 2 All ER 465, [1973] 1 WLR 1071. See also *Horrell v Cooper* [1998] EGCS 151.

4 See *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 10.2.

5 See the Land Registration Act 2002 s 65, Sch 4; and PARA 977 et seq post.

6 See ibid Sch 4; and PARA 978 et seq post.

7 See *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 10.6. As to indemnity see PARA 983 et seq post.

8 Ie in the Land Registration Act 2002 Sch 4: see the text and notes 10-13 infra; and PARAS 978-982 post.

9 See PARA 977 post.

10 The title of the proprietor of a registered estate in land includes his title to any registered estate which subsists for the benefit of the estate in land: Land Registration Act 2002 Sch 4 paras 3(4), 6(4). For the meaning of 'registered estate' see PARA 861 note 3 ante.

11 For the meaning of 'registered' see PARA 826 note 2 ante.

12 Land Registration Act 2002 Sch 4 para 1.

13 Ie the powers in ibid Sch 4: see PARAS 978-982 post.

14 Ibid Sch 4 para 8. See also *Freer v Unwins Ltd* [1976] Ch 288, [1976] 1 All ER 634, where it was held that rectification of the register under the Land Registration Act 1925 s 82 (repealed) was not binding on a lessee under an earlier lease protected by its status as an overriding interest; and cf *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 10.8. For the meaning of 'registered estate' see PARA 861 note 3 ante; and for the meaning of 'registered charge' see PARA 861 note 8 ante.

15 See the Land Registration Act 2002 ss 20, 21; and PARAS 851-853 ante. As to cautions against first registration see PARA 854 et seq ante.

16 See ibid s 124; and PARA 1137 post.

## UPDATE

### 976 Introduction

NOTE 2--See *Pinto v Lim* [2005] EWHC 630 (Ch), [2005] All ER (D) 247 (Apr).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/3. ALTERATION OF THE REGISTER AND INDEMNITIES/(1) ALTERATION OF THE REGISTER/(i) In general/977. Alteration, rectification and the meaning of 'mistake'.

### **977. Alteration, rectification and the meaning of 'mistake'.**

Although the word 'mistake' is used in relation to alteration and rectification of the register<sup>1</sup>, it is not defined in the legislation<sup>2</sup>. Consideration of the cases and of the Law Commission's intentions<sup>3</sup> indicates that it is likely to encompass error on the part of Land Registry staff<sup>4</sup>, mistake by the parties themselves<sup>5</sup>, and the registration of a forged or otherwise void transfer<sup>6</sup>.

Thus in the case of a voidable transfer, where the registration<sup>7</sup> does not involve a mistake, the register may be altered, so as to bring the register up to date, once the transfer has been avoided<sup>8</sup>. Since this does not involve mistake, the alteration does not amount to rectification<sup>9</sup>. Similarly, alteration of the register to give effect to an overriding interest<sup>10</sup> is an alteration which brings the register up to date<sup>11</sup>; it is not rectification, as it does not involve mistake and is not prejudicial to the title of a registered proprietor (since the title was, from the time of the disposition to the registered proprietor, subject to the overriding interest)<sup>12</sup>.

1 See PARAS 976 ante, 978 et seq post. As to the register of title see PARA 811 et seq ante.

2 See the Land Registration Act 2002 s 65, Sch 4 paras 1-3, 5-6; and PARA 978 et seq post.

3 See *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001).

4 *Freer v Unwins Ltd* [1976] 1 Ch 288, [1976] 1 All ER 634. As to the Land Registry see PARA 1064 et seq post.

5 Eg double conveyancing. See *Re 139 Deptford High Street* [1951] Ch 884, [1951] 1 All ER 950; *Re Sea View Gardens*, *Claridge v Tingey* [1966] 3 All ER 935, [1967] 1 WLR 134.

6 *Argyle Building Society v Hammond* (1984) 49 P & CR 148, CA.

7 As to registration generally see PARA 827 et seq ante.

8 See the Land Registration Act 2002 Sch 4 paras 2(1)(b), 5(b); *Norwich and Peterborough Building Society v Steed (No 2)* [1993] Ch 116, [1993] 1 All ER 330, CA; and PARAS 978-979 post.

9 See the Land Registration Act 2002 Sch 4 para 1; and *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 10.7(1) note 23.

10 As to overriding interests see PARAS 863, 962 ante.

11 See the Land Registration Act 2002 Sch 4 paras 2(1)(b), 5(b).

12 *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 10.7(1) note 23.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/3. ALTERATION OF THE REGISTER AND INDEMNITIES/(1) ALTERATION OF THE REGISTER/(ii) Alteration/978. Alteration pursuant to a court order where alteration does not amount to rectification.

### **(ii) Alteration**

#### **978. Alteration pursuant to a court order where alteration does not amount to rectification.**

The court<sup>1</sup> may make an order for alteration of the register<sup>2</sup> for the purpose of: (1) correcting a mistake; (2) bringing the register up to date<sup>3</sup>; or (3) giving effect to any estate, right or interest excepted from the effect of registration<sup>4</sup>. Rules<sup>5</sup> may make provision about the circumstances in which there is a duty to exercise this power, so far as not relating to rectification<sup>6</sup>. They may also make provision about the form<sup>7</sup> and service<sup>8</sup> of such an order<sup>9</sup>.

If in any proceedings the court decides that there is a mistake in the register, that the register is not up to date, or that there is an estate, right or interests excepted from the effect of registration to which effect should be given, it must make an order for alteration of the register under the above power<sup>10</sup> unless such an alteration amounts to rectification<sup>11</sup>; but it is not obliged to make an order if there are exceptional circumstances that justify not doing so<sup>12</sup>.

An order for alteration of the register must state the title number<sup>13</sup> affected and the alteration that is to be made and must direct the Chief Land Registrar<sup>14</sup> to make the alteration<sup>15</sup>. Such an order has effect when served on the registrar<sup>16</sup> to impose a duty on him to give effect to it<sup>17</sup>.

1 For the meaning of 'the court' see PARA 1206 post.

2 As to the register of title see PARA 811 et seq ante.

3 This includes, for example, alteration of the register to give effect to an overriding interest (see PARA 977 ante) or to record an easement acquired by prescription (see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 10.10(2)).

4 Land Registration Act 2002 s 65, Sch 4 para 2(1). As to interests which override first registration see PARA 863 et seq ante; and as to interests which override registered dispositions see PARA 960 et seq ante.

5 As to land registration rules generally see PARA 1125 post.

6 Land Registration Act 2002 Sch 4 para 4(a); and see the text and notes 10-12 infra. For the meaning of 'rectification' see PARA 976 ante.

7 Ibid Sch 4 para 4(b); and see the text and notes 13-15 infra.

8 Ibid Sch 4 para 4(c); and see the text and note 16 infra.

9 Ibid Sch 4 para 4(b), (c).

10 Land Registration Rules 2003, SI 2003/1417, r 126(1).

11 Ibid r 126(3).

12 Ibid r 126(2).

13 As to the meaning of 'title number' see PARA 813.

14 As to the Chief Land Registrar see PARA 1066 post.

15 Land Registration Rules 2003, SI 2003/1417, r 127(1).

16 Service on the registrar of an order for alteration of the register must be made by making an application for the registrar to give effect to the order, accompanied by the order: ibid r 127(2). As to applications to the registrar generally see PARA 1075 et seq post.

17 Land Registration Act 2002 Sch 4 para 2(2).

**979. Alteration by Chief Land Registrar without court order where alteration does not amount to rectification.**

The Chief Land Registrar<sup>1</sup> may alter the register<sup>2</sup> for the purpose of: (1) correcting a mistake; (2) bringing the register up to date; (3) giving effect to any estate, right or interest excepted from the effect of registration<sup>3</sup>; or (4) removing a superfluous entry<sup>4</sup>. Rules<sup>5</sup> may make provision about:

- 222 (a) the circumstances in which there is a duty to exercise this power, so far as not relating to rectification<sup>6</sup>;
- 223 (b) how the register is to be altered in exercise of this power<sup>7</sup>;
- 224 (c) applications for alteration under this power, including provision requiring the making of such applications<sup>8</sup>;
- 225 (d) procedure in relation to the exercise of this power, whether on application or otherwise<sup>9</sup>.

An application for alteration of the register must be supported by such evidence as the registrar considers appropriate<sup>10</sup>. Where an application for alteration of the register has been made, or where the registrar is considering altering the register without an application having been made, he must<sup>11</sup> give notice of the proposed alteration to the registered<sup>12</sup> proprietor of any registered estate or charge<sup>13</sup> who would be affected by it<sup>14</sup>, unless he is satisfied that such notice is unnecessary<sup>15</sup>. He must also give notice of the proposed alteration to any person who appears to the registrar to be entitled to an interest protected by a notice<sup>16</sup> who would be affected by it<sup>17</sup>, unless he is satisfied that such notice is unnecessary<sup>18</sup>; but he is not obliged to give such notice if that person's name and address for service<sup>19</sup> are not set out in the individual register<sup>20</sup> in which the notice is entered<sup>21</sup>. The registrar may make such inquiries as he thinks fit<sup>22</sup>.

The procedure set out above<sup>23</sup> does not apply to alteration of the register in the specific circumstances covered by any other rule<sup>24</sup>.

Provision is made for the procedure where an objection is made to an application to alter the register<sup>25</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 As to the register of title see PARA 811 et seq ante.

3 As to interests which override first registration see PARA 863 et seq ante; and as to interests which override registered dispositions see PARA 960 et seq post.

4 Land Registration Act 2002 s 65, Sch 4 para 5. As to the separate power to deregister manors see s 119; and PARA 825 ante.

5 As to land registration rules generally see PARA 1125 post.

6 Land Registration Act 2002 Sch 4 para 7(a). For the meaning of 'rectification' see PARA 976 ante.

7 Ibid Sch 4 para 7(b).

8 Ibid Sch 4 para 7(c).

9 Ibid Sch 4 para 7(d).

10 Land Registration Rules 2003, SI 2003/1417, r 129. Rule 129 applies except as otherwise provided in the Land Registration Rules 2003, SI 2003/1417: r 129.

11 Ie subject to ibid r 128(5): see the text and note 24 infra.

- 12 For the meaning of 'registered' see PARA 826 note 2 ante.
- 13 For the meaning of 'registered estate' see PARA 861 note 3 ante; and for the meaning of 'registered charge' see PARA 861 note 8 ante.
- 14 Land Registration Rules 2003, SI 2003/1417, r 128(1), (2)(a), (b).
- 15 Ibid r 128(2).
- 16 As to notices see PARA 995 et seq post.
- 17 Land Registration Rules 2003, SI 2003/1417, r 128(2)(c).
- 18 See note 15 supra.
- 19 Ie under the Land Registration Rules 2003, SI 2003/1417, r 198 (see PARA 1130 post): r 128(3).
- 20 For the meaning of 'individual register' see PARA 812 note 3 ante.
- 21 Land Registration Rules 2003, SI 2003/1417, r 128(3).
- 22 Ibid r 128(4).
- 23 Ie ibid r 128(1)-(4): see the text and notes 11-22 supra.
- 24 Ibid r 128(5).
- 25 See the Land Registration Act 2002 s 73; and PARAS 858 ante, 1004, 1081 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/3. ALTERATION OF THE REGISTER AND INDEMNITIES/(1) ALTERATION OF THE REGISTER/(ii) Alteration/980. Costs in non-rectification cases.

### **980. Costs in non-rectification cases.**

If the register<sup>1</sup> is altered<sup>2</sup> in a case not involving rectification<sup>3</sup>, the Chief Land Registrar<sup>4</sup> may pay such amount as he thinks fit in respect of any costs or expenses reasonably incurred by a person in connection with the alteration which have been incurred with the consent of the registrar<sup>5</sup>. Furthermore, he may make a payment under this power notwithstanding the absence of consent if: (1) it appears to him that the costs or expenses had to be incurred urgently, and that it was not reasonably practicable to apply for his consent<sup>6</sup>; or (2) he has subsequently approved the incurring of the costs or expenses<sup>7</sup>.

- 1 As to the register of title see PARA 811 et seq ante.
- 2 Ie altered under the Land Registration Act 2002 s 65, Sch 4: see PARAS 978-979 ante.
- 3 For the meaning of 'rectification' see PARA 976 post.
- 4 As to the Chief Land Registrar see PARA 1066 post.
- 5 Land Registration Act 2002 Sch 4 para 9(1).
- 6 Ibid Sch 4 para 9(2)(a)(i), (ii).
- 7 Ibid Sch 4 para 9(2)(b).



Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/3. ALTERATION OF THE REGISTER AND INDEMNITIES/(1) ALTERATION OF THE REGISTER/(iii) Rectification/981. Rectification pursuant to a court order.

### **(iii) Rectification**

#### **981. Rectification pursuant to a court order.**

Where the court<sup>1</sup> has power<sup>2</sup> to make an order for rectification<sup>3</sup> of the register<sup>4</sup>, no such order may be made without the proprietor's consent in relation to land in his possession<sup>5</sup> unless: (1) he has by fraud or lack of proper care caused or substantially contributed to the mistake<sup>6</sup>; or (2) it would for any other reason be unjust for the alteration not to be made<sup>7</sup>.

If in any proceedings the court has power to make such an order, it must do so, unless there are exceptional circumstances which justify its not doing so<sup>8</sup>.

1 For the meaning of 'the court' see PARA 1206 post.

2 le the power under the Land Registration Act 2002 s 65, Sch 4 para 2: see PARA 978 ante.

3 Ibid Sch 4 para 3(1). For the meaning of 'rectification' see PARA 976 ante. Only the power to make an order under Sch 4 para 2(1)(a) (see PARA 978 head (1) ante) is a power relating to rectification: see Sch 4 para 1; and PARA 976 ante.

4 As to the register of title see PARA 811 et seq ante.

5 As to when land is in the possession of the proprietor of a registered estate in land see the Land Registration Act 2002 s 131; and PARA 877 note 9 ante. As to the meaning of 'land' see PARA 826 note 4 ante.

6 Ibid Sch 4 para 3(2)(a). Cf the Land Registration Act 1925 s 82(3)(a) (repealed). As to mistake see PARA 977 ante.

7 Land Registration Act 2002 Sch 4 para 3(2)(b). Cf the Land Registration Act 1925 s 82(3)(c) (repealed).

8 Land Registration Act 2002 Sch 4 para 3(3). Cf *Epps v Esso Petroleum Co Ltd* [1973] 2 All ER 465 at 472, [1973] 1 WLR 1071 at 1078-1079 per Templeman J. As to the effect of rectification see PARA 976 ante.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/3. ALTERATION OF THE REGISTER AND INDEMNITIES/(1) ALTERATION OF THE REGISTER/(iii) Rectification/982. Rectification by the Chief Land Registrar without court order.

#### **982. Rectification by the Chief Land Registrar without court order.**

Where the Chief Land Registrar<sup>1</sup> has power<sup>2</sup> to rectify<sup>3</sup> the register<sup>4</sup>, no alteration may be made under that power without the proprietor's consent in relation to land in his possession<sup>5</sup> unless: (1) he has by fraud or lack of proper care caused or substantially contributed to the mistake<sup>6</sup>; or (2) it would for any other reason be unjust for the alteration not to be made<sup>7</sup>.

If on an application for alteration<sup>8</sup> the registrar has power to make the alteration, the application must be approved, unless there are exceptional circumstances which justify not making the alteration<sup>9</sup>.

Provision is made for the procedure where an objection is made to an application to rectify the register<sup>10</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

- 2     le the power under the Land Registration Act 2002 s 65, Sch 4 para 5 so far as relating to rectification: see PARA 979 ante.
- 3     Ibid Sch 4 para 6(1). For the meaning of 'rectification' see PARA 976 ante. Only the power to make an order under Sch 4 para 5(a) (see PARA 978 head (1) ante) is a power relating to rectification: see Sch 4 para 1; and PARA 976 ante.
- 4     As to the register of title see PARA 811 et seq ante.
- 5     As to when land is in the possession of the proprietor of a registered estate in land see the Land Registration Act 2002 s 131; and PARA 877 note 9 ante.
- 6     Ibid Sch 4 para 6(2)(a). Cf the Land Registration Act 1925 s 82(3)(a) (repealed).
- 7     Land Registration Act 2002 Sch 4 para 6(2)(b). Cf the Land Registration Act 1925 s 82(3)(c) (repealed).
- 8     le an application under the Land Registration Act 2002 Sch 4 para 5: see PARA 979 ante. As to the evidence that must accompany the application see the Land Registration Rules 2003, SI 2003/1417, r 129; and PARA 979 ante.
- 9     Land Registration Act 2002 Sch 4 para 6(3). As to the notices that must be given, and the inquiries that may be made, whether or not an application for rectification has been made, see the Land Registration Rules 2003, SI 2003/1417, r 128; and PARA 979 ante. As to the effect of rectification see PARA 976 ante.
- 10    See the Land Registration Act 2002 s 73; and PARAS 858 ante, 1004, 1081 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/3. ALTERATION OF THE REGISTER AND INDEMNITIES/(2) INDEMNITIES/983. Entitlement to indemnity.

## **(2) INDEMNITIES**

### **983. Entitlement to indemnity.**

A person is entitled to be indemnified by the Chief Land Registrar<sup>1</sup> if he suffers loss by reason of:

- 226 (1)   rectification<sup>2</sup> of the register<sup>3</sup>;
- 227 (2)   a mistake<sup>4</sup> whose correction would involve rectification of the register<sup>5</sup>;
- 228 (3)   a mistake in an official search<sup>6</sup>;
- 229 (4)   a mistake in an official copy<sup>7</sup>;
- 230 (5)   a mistake in a document kept by the registrar which is not an original and is referred to in the register<sup>8</sup>;
- 231 (6)   the loss or destruction of a document lodged at the Land Registry for inspection or safe custody<sup>9</sup>;
- 232 (7)   a mistake in the cautions register<sup>10</sup>; or
- 233 (8)   failure by the registrar to perform his duty<sup>11</sup> to give notice of the creation of a statutory charge<sup>12</sup>.

For the purposes of the Limitation Act 1980<sup>13</sup>, a liability to pay an indemnity under these provisions is a simple contract debt<sup>14</sup>.

With one exception<sup>15</sup>, the provisions of the Land Registration Act 2002 with regard to indemnities<sup>16</sup> apply in relation to claims made before 13 October 2003<sup>17</sup> which have not been settled by agreement or finally determined by that time, as well as to claims for indemnity made on or after that date<sup>18</sup>.

- 1 As to the Chief Land Registrar see PARA 1066 post.
- 2 For these purposes, references to rectification of the register are references to alteration of the register which: (1) involves the correction of a mistake (see note 4 infra); and (2) prejudicially affects the title of a registered proprietor: Land Registration Act 2002 s 103, Sch 8 para 11(2). Cf s 65, Sch 4 para 1; and PARA 976 ante. As to the register of title see PARA 811 et seq ante.
- 3 Ibid Sch 8 para 1(1)(a). For these purposes, any person who suffers loss by reason of the change of title under s 62 (see PARA 875 et seq ante) is to be regarded as having suffered loss by reason of rectification of the register: Sch 8 para 1(2)(a). The proprietor of a registered estate or charge claiming in good faith under a forged disposition is, where the register is rectified, to be regarded as having suffered loss by reason of such rectification as if the disposition had not been forged: Sch 8 para 1(2)(b). This provision partly reverses the effect of *Re Odell* [1906] 2 Ch 47, CA; and cf the Land Registration Act 1925 s 83(4) (repealed). As to the effect of rectification see PARA 976 ante. As to the amount of indemnity payable see PARA 986 post.
- 4 For these purposes, references to a mistake in something include anything mistakenly omitted from it as well as anything mistakenly included in it: Land Registration Act 2002 Sch 8 para 11(1). See also PARA 977 ante.
- 5 Ibid Sch 8 para 1(1)(b). No indemnity under Sch 8 para 1(1)(b) is payable until a decision has been made about whether to alter the register for the purpose of correcting the mistake; and the loss suffered by reason of the mistake is to be determined in the light of that decision: Sch 8 para 1(3). It has been held under the Land Registration Act 1925 s 83 (repealed) that the court's power to decline to order rectification does not contravene the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) Protocol 1 art 1, because of the power to pay compensation: see *Kingsalton Ltd v Thames Water Developments Ltd* [2001] EWCA Civ 20 at [45] per Arden LJ. As to the amount of indemnity payable see PARA 986 post.
- 6 Land Registration Act 2002 Sch 8 para 1(1)(c); and see eg *Parkash v Irani Finance Ltd* [1970] Ch 101, [1969] 1 All ER 930. As to official searches see PARA 1110 post.
- 7 Land Registration Act 2002 Sch 8 para 1(1)(d). As to official copies see PARA 1096 post.
- 8 Ibid Sch 8 para 1(1)(e). As to documents see PARA 1100 et seq post.
- 9 Ibid Sch 8 para 1(1)(f). As to the Land Registry see PARA 1064 et seq post.
- 10 Ibid Sch 8 para 1(1)(g). As to the register of cautions against first registration see PARA 849 et seq ante.
- 11 Ie under ibid s 50: see PARA 946 ante.
- 12 Ibid Sch 8 para 1(1)(h).
- 13 As to limitation see generally LIMITATION PERIODS.
- 14 Land Registration Act 2002 Sch 8 para 8(a). The cause of action arises at the time when the claimant knows, or but for his own default might have known, of the existence of his claim: Sch 8 para 8(b). The limitation period is six years from the date when the cause of action arises: see the Limitation Act 1980 s 5; and LIMITATION PERIODS vol 68 (2008) PARAS 952, 956.
- 15 The Land Registration Act 2002 Sch 8 para 3(1) (see PARA 987 post) does not apply in relation to costs and expenses incurred in respect of proceedings, negotiations or other matters begun before 27 April 1997: s 134(2), Sch 12 para 19(2).
- 16 Ie ibid Sch 8: see the text and notes 1-14 supra; and PARA 984 et seq post.
- 17 The date mentioned in the text is the date when ibid Sch 8 came into force: see PARA 805 note 1 ante.
- 18 Ibid Sch 12 para 19(1).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/3. ALTERATION OF THE REGISTER AND INDEMNITIES/(2) INDEMNITIES/984. When indemnity not payable.

#### **984. When indemnity not payable.**

No indemnity is payable<sup>1</sup> on account of any mines or minerals<sup>2</sup>, or the existence of any right to work or get mines or minerals, unless it is noted in the register<sup>3</sup> that the title to the registered estate<sup>4</sup> concerned includes the mines or minerals<sup>5</sup>. Nor is any indemnity payable on account of any loss suffered by a claimant wholly or partly as a result of his own fraud<sup>6</sup>, or wholly as a result of his own lack of proper care<sup>7</sup>; and for these purposes any fraud or lack of care on the part of a person from whom the claimant derives title (otherwise than under a disposition for valuable consideration<sup>8</sup> which is registered or protected by an entry in the register) is to be treated as if it were fraud or lack of care on the part of the claimant<sup>9</sup>.

Indemnity in respect of costs or expenses incurred by the claimant may not be payable unless they were incurred with the Chief Land Registrar's<sup>10</sup> prior consent<sup>11</sup>.

1 le under the Land Registration Act 2002 s 103, Sch 8: see PARAS 983 ante, 985 et seq post.

2 As to the meaning of 'mines and minerals' see PARA 826 note 4 ante.

3 As to the register of title see PARA 811 et seq ante.

4 For the meaning of 'registered estate' see PARA 861 note 3 ante.

5 Land Registration Act 2002 Sch 8 para 2.

6 Ibid Sch 8 para 5(1)(a). Cf the Land Registration Act 1925 s 83(5)(a) (repealed).

7 Land Registration Act 2002 Sch 8 para 5(1)(b). Cf the Land Registration Act 1925 s 83(5)(a) (repealed). For the position where the loss was partly as a result of his own lack of proper care see PARA 985 post. As to the appropriate test of causation see *Dean v Dean* (2000) 80 P & CR 457.

8 As to the meaning of 'valuable consideration' see PARA 827 note 7 ante.

9 Land Registration Act 2002 Sch 8 para 5(3).

10 As to the Chief Land Registrar see PARA 1066 post.

11 See the Land Registration Act 2002 Sch 8 para 3; and PARA 987 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/3. ALTERATION OF THE REGISTER AND INDEMNITIES/(2) INDEMNITIES/985. Contribution to loss by lack of proper care.

### 985. Contribution to loss by lack of proper care.

Where any loss is suffered by a claimant partly as a result of his own lack of proper care<sup>1</sup>, any indemnity payable to him is to be reduced to such extent as is fair having regard to his share in the responsibility for the loss<sup>2</sup>.

1 For these purposes, any lack of care on the part of a person from whom the claimant derives title (otherwise than under a disposition for valuable consideration which is registered or protected by an entry in the register) is to be treated as if it were lack of care on the part of the claimant: see the Land Registration Act 2002 s 103, Sch 8 para 5(3); and PARA 984 ante.

2 Ibid Sch 8 para 5(2). For the position where the loss is suffered wholly as a result of the claimant's lack of proper care, or wholly or partly as a result of his fraud see PARA 984 ante. See *Prestige Properties Ltd v Scottish Provident Institution* [2002] EWHC 330 (Ch), [2003] Ch 1, [2003] 2 All ER 1145 (a claimant does not lose his right to indemnity where he fails to apply for first registration of land because of his reliance on an incorrect search certificate).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/3. ALTERATION OF THE REGISTER AND INDEMNITIES/(2) INDEMNITIES/986. Amount of indemnity in respect of loss of estate, interest or charge.

**986. Amount of indemnity in respect of loss of estate, interest or charge.**

Where an indemnity is payable<sup>1</sup> in respect of the loss of an estate, interest or charge, the value of the estate, interest or charge for the purposes of the indemnity is to be regarded as not exceeding:

- 234 (1) in the case of an indemnity where the register is rectified<sup>2</sup>, its value immediately before rectification of the register, but as if there were to be no rectification<sup>3</sup>; and
- 235 (2) in the case of an indemnity where the register is not rectified<sup>4</sup>, its value at the time when the mistake<sup>5</sup> which caused the loss was made<sup>6</sup>.

1 Ie under the Land Registration Act 2002 s 103, Sch 8 para 1: see PARA 983 ante.

2 Ie in the case of an indemnity under ibid Sch 8 para 1(1)(a): see PARA 983 head (1) ante. As to the register of title see PARA 811 et seq ante.

3 Ibid Sch 8 para 6(a). For the meaning of 'rectification' for these purposes see PARA 983 note 2 ante. The effect of rectification is prospective, not retrospective: see PARA 976 ante.

4 Ie in the case of an indemnity under ibid Sch 8 para 1(1)(b): see PARA 983 head (2) ante.

5 For the meaning of 'mistake' for these purposes see PARA 983 note 4 ante.

6 Land Registration Act 2002 Sch 8 para 6(b).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/3. ALTERATION OF THE REGISTER AND INDEMNITIES/(2) INDEMNITIES/987. Indemnity in respect of costs or expenses.

**987. Indemnity in respect of costs or expenses.**

In respect of loss consisting of costs or expenses incurred by the claimant in relation to the matter, an indemnity<sup>1</sup> is payable only on account of costs or expenses reasonably incurred by the claimant with the consent of the Chief Land Registrar<sup>2</sup>; but the requirement of consent does not apply where the costs or expenses must be incurred by the claimant urgently<sup>3</sup> and it is not reasonably practicable to apply for the registrar's consent<sup>4</sup>. If the registrar approves the incurring of costs or expenses after they have been incurred, they are to be treated for these purposes as having been incurred with his consent<sup>5</sup>.

1 Ie an indemnity under the Land Registration Act 2002 s 103, Sch 8: see PARAS 983-986 ante.

2 Ibid Sch 8 para 3(1). Schedule 8 para 3(1) (see also PARA 990 post) does not apply in relation to costs and expenses incurred in respect of proceedings, negotiations or other matters begun before 27 April 1997: s 134(2), Sch 12 para 19(2). As to the Chief Land Registrar see PARA 1066 post.

3 Ibid Sch 8 para 3(2)(a).

4 Ibid Sch 8 para 3(2)(b).

5 Ibid Sch 8 para 3(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/3. ALTERATION OF THE REGISTER AND INDEMNITIES/(2) INDEMNITIES/988. Determination of indemnity by the court.

### **988. Determination of indemnity by the court.**

A person may apply to the court<sup>1</sup> for the determination of any question as to whether he is entitled to an indemnity<sup>2</sup> or the amount of such an indemnity<sup>3</sup>. The requirement for the Chief Land Registrar's<sup>4</sup> prior approval of costs and expenses<sup>5</sup> does not apply to the costs of such an application to the court or of any legal proceedings arising out of such an application<sup>6</sup>.

1 For the meaning of 'the court' see PARA 1206 post.

2 Ie an indemnity under the Land Registration Act 2002 s 103, Sch 8: see PARAS 983-986 ante, 989-991 post.

3 Ibid Sch 8 para 7(1).

4 As to the Chief Land Registrar see PARA 1066 post

5 Ie the Land Registration Act 2002 Sch 8 para 3(1): see PARA 987 ante.

6 Ibid Sch 8 para 7(2).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/3. ALTERATION OF THE REGISTER AND INDEMNITIES/(2) INDEMNITIES/989. Payment of interest on indemnity.

### **989. Payment of interest on indemnity.**

Rules<sup>1</sup> may make provision about the payment of interest on an indemnity<sup>2</sup>, including the circumstances in which interest is payable<sup>3</sup> and the periods for and rates at which it is payable<sup>4</sup>.

Such interest is payable at the applicable rate or rates set for court judgment debts<sup>5</sup> and is payable on the amount of any indemnity<sup>6</sup> paid in respect of an indemnity on account of costs or expenses<sup>7</sup>, from the date when the claimant became liable to pay them to the date of payment<sup>8</sup>; and subject to this interest is payable:

236 (1) in the case of an indemnity where the register is rectified<sup>9</sup>, from the date of rectification<sup>10</sup> to the date of payment<sup>11</sup>;

237 (2) in any other case<sup>12</sup>, from the date the loss is suffered by reason of the relevant mistake, loss, destruction or failure to the date of payment<sup>13</sup>,

but excluding any period or periods where the Chief Land Registrar<sup>14</sup> or the court<sup>15</sup> is satisfied that the claimant has not taken reasonable steps to pursue with due diligence the claim for indemnity or, where relevant, the application for rectification<sup>16</sup>.

1 As to land registration rules generally see PARA 1125 post.

2 Ie an indemnity under the Land Registration Act 2002 s 103, Sch 8: see PARA 983 et seq ante.

3 Ibid Sch 8 para 9(a).

4 Ibid Sch 8 para 9(b). There was no equivalent provision in the Land Registration Act 1925 (repealed).

5 Land Registration Rules 2003, SI 2003/1417, r 195(3). As to the rate of interest on judgment debts see CIVIL PROCEDURE Vol 12 (2009) PARA 1149.

6 Ibid r 195(1).

7 Ie an indemnity within the Land Registration Act 2002 Sch 8 para 3: see PARA 987 ante.

8 Land Registration Rules 2003, SI 2003/1417, r 195(4). A reference in r 195 to a period from a date to the date of payment excludes the first date but includes the latter date: r 195(5).

9 Ie where the Land Registration Act 2002 Sch 8 para 1(1)(a) applies: see PARA 983 head (1) ante.

10 For the meaning of 'rectification' see PARA 983 note 2 ante. Cf para 976 ante.

11 Land Registration Rules 2003, SI 2003/1417, r 195(2)(a). See also note 8 supra.

12 Ie where any of the provisions of the Land Registration Act 2002 Sch 8 para 1(1)(b)-(h) applies: see PARA 983 heads (2)-(8) ante.

13 Land Registration Rules 2003, SI 2003/1417, r 195(2)(b). See also note 8 supra.

14 As to the Chief Land Registrar see PARA 1066 post.

15 For the meaning of 'the court' see PARA 1206 post.

16 Land Registration Rules 2003, SI 2003/1417, r 195(2).

## UPDATE

### 989 Payment of interest on indemnity

TEXT AND NOTES--SI 2003/1417 r 195 substituted: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/3. ALTERATION OF THE REGISTER AND INDEMNITIES/(2) INDEMNITIES/990. Payment of costs or expenses where no indemnity payable.

### 990. Payment of costs or expenses where no indemnity payable.

If no indemnity is payable to a claimant<sup>1</sup>, the Chief Land Registrar<sup>2</sup> may pay such amount as he thinks fit in respect of any costs or expenses reasonably incurred by the claimant in connection with the claim which have been incurred with the consent of the registrar<sup>3</sup>. He may make such a payment notwithstanding the absence of consent if: (1) it appears to him that the costs or expenses had to be incurred urgently and that it was not reasonably practicable to apply for his consent<sup>4</sup>; or (2) he has subsequently approved the incurring of the costs or expenses<sup>5</sup>.

1 Ie under the Land Registration Act 2002 s 103, Sch 8: see PARA 983 et seq ante.

2 As to the Chief Land Registrar see PARA 1066 post.

3 Land Registration Act 2002 Sch 8 para 4(1).

4 Ibid Sch 8 para 4(2)(a).

5 Ibid Sch 8 para 4(2)(b). There was no equivalent provision under the Land Registration Act 1925 (repealed). As to the circumstances in which the power under the Land Registration Act 2002 Sch 8 para 4 may

be exercised see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 10.46.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/3. ALTERATION OF THE REGISTER AND INDEMNITIES/(2) INDEMNITIES/991. Recovery of indemnity by Chief Land Registrar.

### **991. Recovery of indemnity by Chief Land Registrar.**

Where an indemnity<sup>1</sup> is paid to a claimant in respect of any loss, the Chief Land Registrar<sup>2</sup> is entitled<sup>3</sup> to recover the amount paid from any person who caused or substantially contributed to the loss by his fraud<sup>4</sup>. Alternatively, he is entitled<sup>5</sup>, for the purpose of recovering the amount paid, to enforce the following rights of action<sup>6</sup>:

- 238 (1) any right of action (of whatever nature and however arising) which the claimant would have been entitled to enforce had the indemnity not been paid<sup>7</sup>; and
- 239 (2) where the register<sup>8</sup> has been rectified<sup>9</sup>, any right of action (of whatever nature and however arising) which the person in whose favour the register has been rectified would have been entitled to enforce had it not been rectified<sup>10</sup>.

1    Ie an indemnity under the Land Registration Act 2002 s 103, Sch 8: see PARA 983 et seq ante. For these purposes, references to an indemnity include interest paid on an indemnity under rules under Sch 8 para 9 (see PARA 989 ante): Sch 8 para 10(3).

2    As to the Chief Land Registrar see PARA 1066 post.

3    Ie without prejudice to any other rights he may have: Land Registration Act 2002 Sch 8 para 10(1).

4    Ibid Sch 8 para 10(1)(a).

5    Ie without prejudice to any other rights he may have: ibid Sch 8 para 10(1).

6    Ibid Sch 8 para 10(1)(b).

7    Ibid Sch 8 para 10(2)(a). This right is similar to an insurer's right of subrogation (see INSURANCE): see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 10.52.

8    As to the register of title see PARA 811 et seq ante.

9    As to rectification see PARA 976 et seq ante.

10   Land Registration Act 2002 Sch 8 para 10(2)(b). As to the circumstances in which Sch 8 para 10(2)(b) may apply see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 10.52.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(1) INTRODUCTION/992. The previous law.

## **4. NOTICES AND RESTRICTIONS**

### **(1) INTRODUCTION**

#### **992. The previous law.**



Under the Land Registration Act 1925, third party rights with regard to registered land might be protected by the entry on the register of: (1) notices entered either with the agreement of the registered proprietor or by order of the court<sup>1</sup>; (2) cautions against dealings<sup>2</sup>; (3) inhibitions<sup>3</sup>; and (4) restrictions<sup>4</sup>.

Protection by way of notice on the register was available<sup>5</sup> for any right, interest or claim which it might be deemed expedient<sup>6</sup> to protect in that way, rather than by caution, inhibition or restriction<sup>7</sup>. Protection by notice was expedient for all minor interests<sup>8</sup> capable of binding a registered interest in the hands of a disponee<sup>9</sup> and, consistently with that principle, provision was made for the entry of notice to protect a number of designated interests<sup>10</sup>. The same form of protection was required on completion of registered dispositions, other than transfers of the whole of the land comprised in a title<sup>11</sup>, and was also the means of recording the existence of, or freedom from, overriding interests<sup>12</sup>. Where land was affected by manorial incidents, the registrar might enter a note of that fact on the register, and might cancel that note when extinguishment of the manorial incidents had been proved to his satisfaction<sup>13</sup>.

Any person<sup>14</sup> interested<sup>15</sup> under any unregistered instrument, or interested as a judgment creditor, or in any other way, in any land or charge<sup>16</sup> registered in the name of any other person, might lodge a caution with the registrar, provided the interest was not otherwise protected on the register<sup>17</sup>, supported by such evidence as might be prescribed<sup>18</sup>, to the effect that no dealing with the land or charge on the part of the proprietor might be registered until notice had been served upon the cautioner<sup>19</sup>.

On the application of any person interested, made in the prescribed manner, in relation to any registered land or charge, the High Court or a county court or, subject to an appeal to the court, the registrar, might, after directing any necessary inquiries to be made and notices to be given and hearing such persons as the court or registrar thought expedient, issue an order or make an entry inhibiting for a time, or until the occurrence of an event to be named in the order or entry, or generally until further order or entry, the registration or entry of any dealing with any registered land or registered charge<sup>20</sup>. The court or registrar had power either to make or to refuse to make any such order or entry, and might annex to it any terms or conditions as it or he thought fit, and might discharge the order or cancel the entry when granted, with or without costs, and generally act as the justice of the case required<sup>21</sup>. In lieu of an inhibition, the court or registrar might order a notice or restriction to be placed on the register<sup>22</sup>.

Finally, a proprietor of any registered land or charge<sup>23</sup> who wished to place restrictions on transferring or charging the land, or on disposing of or dealing with the land or charge in any manner in which he was authorised to dispose of or deal with the land or charge, might apply for an appropriate entry to be made on the register<sup>24</sup>. A restriction could not be used to restrain dispositions of or dealings with minor interests<sup>25</sup>. An entry placing restrictions on disposing of or dealing with registered land or a registered charge might be to the effect that no transaction to which the application related was to be effected unless certain conditions, or such of them as the proprietor might determine, were fulfilled<sup>26</sup>. The conditions were that:

- 240 (1) notice of any application for the transaction was to be served by post at a specified address<sup>27</sup>;
- 241 (2) the consent of a certain named person or persons was to be given<sup>28</sup>; and
- 242 (3) such other matter or thing was to be done as might be required by the applicant and approved by the registrar<sup>29</sup>.

No transaction to which a restriction related might be effected except in conformity with it<sup>30</sup>. In the case of an obligatory restriction<sup>31</sup>, where the number of proprietors had been reduced to one (not being a trust corporation), before entering on the register any disposition by the proprietor the registrar was to require the production of the equitable title<sup>32</sup>; and he might give

such notices to the persons or some or one of the persons, equitably entitled, as he deemed expedient<sup>33</sup>.

1 See the Land Registration Act 1925 ss 48-52 (repealed).

2 See *ibid* ss 54-56 (repealed). As to cautions against first registration see s 53 (repealed).

3 See *ibid* s 57 (repealed).

4 See *ibid* s 58 (repealed).

5 The subject to certain provisions: see particularly the *ibid* s 49(2) (repealed), which provided that a notice was not to be registered in respect of any estate, right, or interest which (independently of the Land Registration Act 1925) was capable of being overridden by the proprietor under a trust of land or the powers of the Settled Land Act 1925, or any other statute, or of a settlement, and of being protected by a restriction in the prescribed manner, but that notice of such an estate, right or interest might be lodged pending the appointment of trustees of land, or trustees of a settlement, and if so lodged, was to be cancelled if and when the appointment was made and the proper restriction (if any) was entered.

6 It seems that the question of expediency was to be determined by the opinion of the registrar whether or not a proposed notice was likely to cause confusion or inconvenience: see the Land Registration Rules 1925, SR & O 1925/1093, r 199 (revoked).

7 See the Land Registration Act 1925 s 49(1)(f) (repealed).

8 'Minor interests' meant the interests not capable of being disposed of or created by registered dispositions and capable of being overridden (whether or not a purchaser had notice of them) by the proprietors unless protected as provided by the Land Registration Act 1925, and all rights and interests which were not registered or protected on the register and were not overriding interests, and included: (1) in the case of land subject to a trust of land, all interests and powers which were under the Law of Property Act 1925 capable of being overridden by the trustees, whether or not such interests and powers were so protected; and (2) in the case of settled land, all interests and powers which were under the Settled Land Act 1925 and the Law of Property Act 1925, or either of them, capable of being overridden by the tenant for life or statutory owner, whether or not such interests and powers were so protected as aforesaid: Land Registration Act 1925 s 3(xv) (repealed). The term 'minor interests' is not reproduced in the Land Registration Act 2002.

9 A disposition by the proprietor took effect subject to all estates, rights, and claims which were protected by way of notice on the register at the date of the registration or entry of notice of the disposition, but only if and so far as such estates, rights, and claims might be valid and were not (independently of the Land Registration Act 1925 overridden by the disposition: s 52(1) (repealed)). Where notice of a claim was entered on the register, such entry operated by way of notice only, and did not operate to render the claim valid whether made adversely to or for the benefit of the registered land or charge: s 52(2) (repealed).

10 See *ibid* ss 48-50 (repealed).

11 See *ibid* ss 19, 22 (repealed).

12 See the Land Registration Rules 1925, SR & O 1925/1093, r 197 (revoked).

13 See the Land Registration Act 1925 s 51 (repealed).

14 In the case of a minor, the caution might be lodged by his parent, trustee or guardian: see *ibid* s 111(4) (repealed).

15 Within the general authority relating to cautions against dealings under *ibid* s 54 (repealed), a caution was expressly made available to protect: (1) matters for which, in the case of unregistered land, protection by registration under the Land Charges Act 1972 and the Local Land Charges Act 1975 (see LAND CHARGES) was appropriate (see the Land Registration Act 1925 s 59(1), (2) (repealed)); (2) the intended appointment of a special or additional personal representative (see s 41(2) (repealed)); (3) any arrangement with respect to land made under any of the enactments relating to or administered by the Church Commissioners, whether by scheme and Order in Council, grant, conveyance, transfer or other instrument (see the Land Registration Rules 1925, SR & O 1925/1093, r 238 (revoked)); (4) the rights of persons interested in settled land (see r 57 (revoked)); and (5) interests in respect of the title to an undivided share under certain transitional provisions (see the Land Registration Act 1925 s 78(4) (repealed)).

16 A caution might only properly be lodged to protect an interest in registered land or a registered charge. Proceedings by which a person claims that the owner of registered land should be restrained from exercising his

powers of disposition were held not to constitute a pending land action and could not be protected by a caution: *Calgary and Edmonton Land Co Ltd v Dobinson* [1974] Ch 102, [1974] 1 All ER 484. See also *Clayhope Properties Ltd v Evans* [1986] 2 All ER 795, [1986] 1 WLR 1223 (statutory tenant had a sufficient interest to maintain a caution on his landlord's title in respect of an order appointing a receiver made in the course of an action seeking specific performance of the landlord's repairing covenants); *Woolf Project Management Ltd v Woodtrek Ltd* [1988] 1 EGLR 179, (1987) 56 P & CR 134 (provision for payment of an additional sum in the event of the purchaser developing the property could not be protected by a caution); *Observatory Hills Ltd v Camtel Investments SA* [1997] 1 EGLR 140, [1997] 18 EG 126 (adjoining owner who had the benefit of a party wall award under the London Building Acts (Amendment) Act 1939 had no right to enter a caution on the register).

17 See the Land Registration Act 1925 s 54(1) proviso (repealed).

18 Ibid s 54(2) (repealed).

19 Ibid s 54(1) (repealed).

20 Ibid s 57(1) (repealed).

21 Ibid s 57(2) (repealed).

22 Ibid s 57(4) (repealed).

23 In the case of joint proprietors, a restriction might be to the effect that when the number of proprietors was reduced below a specified number no disposition might be registered except under an order of the court or of the registrar after inquiry into title, subject to appeal to the court: *ibid* s 58(3) (repealed). Subject to general rules, such an entry in the prescribed form was obligatory unless it was shown to the satisfaction of the registrar that the joint proprietors were entitled for their own benefit, or could give valid receipts for capital money, or that one of them was a trust corporation: *see* s 58(3) (repealed). An application for first registration by a sole or last surviving trustee of land had to be accompanied by an application for a restriction and any application by a sole or last surviving trustee of land for registration of a disposition of registered land had to be accompanied by an application for the obligatory restriction. Where registered land had become subject to a trust of land otherwise than on a registrable disposition and the proprietor or the survivor of the proprietors would be unable (unless a trust corporation) to give a valid receipt for capital money, the proprietors were to apply for the obligatory restriction; and where as a result of a change in the trusts on which the registered land was held the survivor of the proprietors would be unable (unless a trust corporation) to give a valid receipt for capital money, and there was no obligatory restriction on the register, the proprietor was to apply for one; but no such restriction might be entered where a prescribed restriction applicable to settled land was entered on the register: *see* the Land Registration Rules 1925, SR & O 1925/1093, r 213 (revoked).

24 Land Registration Act 1925 s 58(1) (repealed).

25 See *ibid* s 58(1) proviso (repealed); and *cf* note 8 *supra*.

26 Ibid s 58(1) (repealed).

27 Ibid s 58(1)(a) (repealed).

28 Ibid s 58(1)(b) (repealed).

29 Ibid s 58(1)(c) (repealed).

30 See *ibid* s 58(2) (repealed).

31 See note 23 *supra*.

32 In practice the restriction was cancelled at any time that the sole proprietor was shown to be entitled to the entirety of the beneficial interests free from incumbrances.

33 See the Land Registration Rules 1925, SR & O 1925/1093, r 214 (revoked).

### 993. Prospective abolition of cautions against dealings.

Under the Land Registration Act 2002, there continues to be a right to lodge cautions against first registration<sup>1</sup> and a new register of such cautions has been introduced<sup>2</sup>. However, there is no longer a power to lodge cautions against dealings, and the protection of third party interests will now be achieved by notices and restrictions<sup>3</sup>.

Existing cautions against dealings which were lodged under the Land Registration Act 1925 continue to have effect<sup>4</sup>. After any such caution against dealings has been lodged in respect of any registered land or charge, the registrar must not, without the consent of the cautioner<sup>5</sup>, register any dealing or make any entry on the register for protecting the rights acquired under a deposit of a land or charge certificate<sup>6</sup> or other dealing by the proprietor with such land or charge until he has served notice on the cautioner, warning him that his caution will cease to have any effect after the expiration of the prescribed number of days<sup>7</sup> next following the date at which the notice is served<sup>8</sup>. After the expiration of that time the caution ceases unless an order to the contrary is made by the registrar<sup>9</sup>, and upon the caution so ceasing the registered land or charge may be dealt with in the same manner as if no caution had been lodged<sup>10</sup>. If before the expiration of that period the cautioner, or some person on his behalf, appears before the registrar, and where so required by the registrar gives sufficient security to indemnify every party against any damage that may be sustained by reason of any dealing with the registered land or charge, or the making of any such entry as is mentioned above, being delayed, the registrar may thereupon, if he thinks fit to do so, delay registering any dealing with the land or charge or making any such entry for such period as he thinks just<sup>11</sup>. Any person aggrieved by any act done by the registrar in relation to a caution under the Land Registration Act 1925 may appeal to the court in the prescribed manner<sup>12</sup>.

If any person has lodged a caution with the registrar without reasonable cause, he is liable to make to any person who may have sustained damage by the lodging of the caution such compensation as may be just, and such compensation is recoverable as a debt by the person who has sustained damage from the person who lodged the caution<sup>13</sup>.

A caution lodged in pursuance of the Land Registration Act 1925 does not prejudice the claim or title of any person and has no effect whatever except as mentioned in that Act<sup>14</sup>.

Rules<sup>15</sup> may make provision about cautions against dealings entered under the Land Registration Act 1925<sup>16</sup>.

Notwithstanding the repeal of the Land Registration Act 1925, that Act continues to have effect in relation to an application for the entry in the register of a caution against dealings which was pending immediately before 13 October 2003<sup>17</sup>.

The cautioner may at any time apply to withdraw his caution<sup>18</sup>. A person may also apply to the registrar for the cancellation of a caution if he is: (1) the proprietor of the registered estate<sup>19</sup> or registered charge<sup>20</sup> to which the caution relates; or (2) a person that, but for the existence of the caution, would be entitled to be registered as the proprietor of that estate or charge<sup>21</sup>. Where application is so made, the registrar must give the cautioner notice of the application<sup>22</sup>. Following the expiry of the notice period<sup>23</sup>, unless the registrar makes an order that the caution is to continue until withdrawn or otherwise disposed of<sup>24</sup>, he must cancel the entry of the caution<sup>25</sup>.

1 See the Land Registration Act 2002 ss 15-18; and PARA 854 et seq ante.

2 See ibid ss 19-21; and PARA 850 et seq ante.

3 See *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARAS 6.3-6.4. As to notices and restrictions see PARA 995 et seq post.

4 Notwithstanding their repeal by the Land Registration Act 2002 s 135, Sch 13, the Land Registration Act 1925 ss 55, 56 continue to have effect so far as relating to cautions against dealings lodged under the Land Registration Act 1925: Land Registration Act 2002 s 134(2), Sch 12 para 2(3). Furthermore, an entry in the register which, immediately before the repeal of the Land Registration Act 1925 s 144(1)(xi), operated by virtue of the Land Registration Rules 1925, SR & O 1925/1093, r 239 (revoked) as a caution under the Land Registration Act 1925 s 54 (repealed) continues to operate as such a caution: Land Registration Act 2002 Sch 12 para 3. For the purposes of Sch 12 para 2, references to the Land Registration Act 1925 include a reference to any enactment replaced (directly or indirectly) by that Act: Land Registration Act 2002 Sch 12 para 2(5).

5 The personal representative of a deceased cautioner may consent or object to registration or a dealing in the same manner as the cautioner: Land Registration Act 1925 s 56(4) (repealed subject to transitional provisions: see note 4 *supra*). Any consent given under s 55 or s 56 (both repealed subject to transitional provisions) must be in writing signed by the person giving it or his conveyancer: Land Registration Rules 2003, SI 2003/1417, r 219. For the meaning of 'conveyancer' see PARA 832 note 4 *ante*.

6 As to land and charge certificates see PARA 1129 *post*.

7 For these purposes, and for the purposes of the Land Registration Rules 2003, SI 2003/1417, r 221(2) (see note 8 *infra*) and r 223(3) (see note 22 *infra*), the notice period is the period ending at 12 noon on the fifteenth business day, or ending at 12 noon on such later business day as the Chief Land Registrar may allow, after the date of issue of the notice: r 218. For the meaning of 'business day' see PARA 847 note 9 *ante*. As to the substituted period where there has been a notice under r 216(2) see PARA 1065 *post*. As to the Chief Land Registrar see PARA 1066 *post*.

8 Land Registration Act 1925 s 55(1) (repealed subject to transitional provisions: see note 4 *supra*). Where notice is so served, or is served under the Land Registration Rules 2003, SI 2003/1417, r 223(3) (see notes 21-25 *infra*), then at any time before expiry of the notice period, the cautioner may show cause why the registrar should not give effect to the application that resulted in the notice being served: r 221(1), (2). To show cause, the cautioner must: (1) deliver to the registrar, in the manner and to the address stated in the notice, a written statement signed by the cautioner or his conveyancer setting out the grounds relied upon; and (2) show that he has a fairly arguable case for the registrar not to give effect to the application that resulted in the notice being served: r 221(3). If, after reading the written statement, and after making any inquiries he thinks necessary, the registrar is satisfied that cause has been shown, he must order that the caution is to continue until withdrawn or otherwise disposed of under the Land Registration Rules 2003, SI 2003/1417, or the Land Registration Act 2002: Land Registration Rules 2003, SI 2003/1417, r 221(4). For these purposes, 'caution' means a caution entered in the register of title under the Land Registration Act 1925 s 54 (repealed) (see PARA 992 *ante*); and 'cautioner' includes his personal representative: Land Registration Rules 2003, SI 2003/1417, r 218.

9 Where the registrar makes an order under *ibid* r 221(4) (see note 8 *supra*), the registrar must give notice to the applicant and the cautioner that he has made the order and of the effect of r 221(5)(b): r 221(5)(a). The cautioner is to be treated as having objected under the Land Registration Act 2002 s 73 (see PARA 1081 *post*) to the application that resulted in the notice being served (Land Registration Rules 2003, SI 2003/1417, r 221(5)(b)); and the notice given by the registrar under r 221(5)(a) to the applicant is to be treated as notice given under the Land Registration Act 2002 s 73(5)(a) (Land Registration Rules 2003, SI 2003/1417, r 221(5)(c)).

10 Land Registration Act 1925 s 55(1) (repealed subject to transitional provisions: see note 4 *supra*). If, after service of the notice under s 55(1) (repealed subject to transitional provisions) or under the Land Registration Rules 2003, SI 2003/1417, r 223(3) (see note 22 *infra*), the application that resulted in the notice being served is cancelled, withdrawn or otherwise does not proceed, the registrar must make an order that the caution will continue to have effect, unless he has already done so or the caution has been cancelled: r 221(6).

11 Land Registration Act 1925 s 55(2) (repealed subject to transitional provisions: see note 4 *supra*).

12 *Ibid* s 56(1) (repealed subject to transitional provisions: see note 4 *supra*). However, it seems that the matter would now be first referred to the adjudicator: see PARA 1146 *et seq post*.

13 *Ibid* s 56(3) (repealed subject to transitional provisions: see note 4 *supra*).

14 *Ibid* s 56(2) (repealed subject to transitional provisions: see note 4 *supra*).

15 As to land registration rules generally see PARA 1125 *post*.

16 Land Registration Act 2002 Sch 12 para 2(4). See notes 5, 7-10 *supra*; and the text and notes 18-25 *infra*.

17 *Ibid* Sch 12 para 5. As to the previous law see PARA 992 *ante*. The date mentioned in the text is the date when the Land Registration Act 2002 Sch 13, repealing the Land Registration Act 1925 subject to transitional provisions, came into force: see PARA 805 note 1 *ante*.

18 Land Registration Rules 2003, SI 2003/1417, r 222(1). The application must be in Sch 1 Form WCT (r 222(1)), which must be signed by the cautioner or his conveyancer (r 222(2)). As to the use of forms generally see PARA 1087 et seq post.

19 For the meaning of 'registered estate' see PARA 861 note 3 ante.

20 For the meaning of 'registered charge' see PARA 861 note 8 ante.

21 Land Registration Rules 2003, SI 2003/1417, r 223(1). The application must be in Sch 1 Form CCD: r 223(2).

22 Ibid r 223(3).

23 The notice period is 14 days. See, however, see note 7 supra.

24 Ie under the Land Registration Rules 2003, SI 2003/1417, r 221(4) (see note 8 supra): see r 223(4).

25 Ibid r 223(4).

## UPDATE

### 993 Prospective abolition of cautions against dealings

NOTE 18--SI 2003/1417 Sch 1 Form WCT substituted by SI 2008/1919; and amended by SI 2009/1996.

NOTE 21--SI 2003/1471 r 223(1) amended: SI 2008/1919. SI 2003/1471 Sch 1 Form CCD substituted by SI 2008/1919; and amended by SI 2009/1996.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(1) INTRODUCTION/994. Abolition of inhibitions as a separate form of entry.

### 994. Abolition of inhibitions as a separate form of entry.

Inhibitions under the Land Registration Act 1925 were a particular form of restriction on the power of the registered proprietor or certain other persons to make a disposition of registered land<sup>1</sup>. Under the Land Registration Act 2002, inhibitions are subsumed into restrictions<sup>2</sup>. The Land Registration Act 2002 applies to restrictions and inhibitions entered under the 1925 Act as it applies to restrictions entered under the 2002 Act<sup>3</sup>.

Notwithstanding the repeal of the Land Registration Act 1925, that Act continues to have effect in relation to an application for the entry in the register of an inhibition which is pending immediately before 13 October 2003<sup>4</sup>.

1 As to inhibitions see PARA 992 ante.

2 See *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 6.32.

3 Land Registration Act 2002 s 134(2), Sch 12 para 2(2). For these purposes, references to the Land Registration Act 1925 include a reference to any enactment replaced (directly or indirectly) by that Act: Land Registration Act 2002 Sch 12 para 2(5).

4 Ibid Sch 12 para 5. As to the previous law see PARA 992 ante. The date mentioned in the text is the date when the Land Registration Act 2002 Sch 13, repealing the Land Registration Act 1925 subject to transitional provisions, came into force: see PARA 805 note 1 ante.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(2) NOTICES/(i) In general/995. Nature and effect of notices.

## **(2) NOTICES**

### **(i) In general**

#### **995. Nature and effect of notices.**

A notice is an entry in the register<sup>1</sup> in respect of the burden of an interest affecting a registered estate<sup>2</sup> or charge<sup>3</sup>. The entry of a notice is to be made in relation to the registered estate or charge affected by the interest concerned<sup>4</sup>.

The fact that an interest is the subject of a notice does not necessarily mean that the interest is valid, but does mean that the priority of the interest, if valid, is protected for the purposes of the statutory provisions<sup>5</sup> relating to the effect of registered dispositions of registered estates and charges<sup>6</sup>.

The Land Registration Act 2002 applies to notices entered under the Land Registration Act 1925<sup>7</sup> as it applies to notices entered in pursuance of an application<sup>8</sup> under the 2002 Act<sup>9</sup>.

Rules<sup>10</sup> may make provision about the form and content of notices in the register<sup>11</sup>. A notice under these provisions must be entered in the charges register<sup>12</sup> of the registered title<sup>13</sup> affected<sup>14</sup>. The entry must identify the registered estate or registered charge affected and, where the interest protected by the notice<sup>15</sup> only affects part of the registered estate in a registered title, it must contain sufficient details, by reference to a plan or otherwise, to identify clearly that part<sup>16</sup>.

1 As to the register of title see PARA 811 et seq ante.

2 For the meaning of 'registered estate' see PARA 861 note 3 ante.

3 Land Registration Act 2002 s 32(1). For the meaning of 'registered charge' see PARA 861 note 8 ante. The reference to an interest affecting an estate or charge is a reference to an adverse right affecting the title to it: see PARA 835 note 8 ante.

4 Ibid s 32(2).

5 Ie for the purposes of ibid ss 29, 30 (see PARAS 935-936 ante): see s 32(3).

6 Ibid s 32(3). Cf the Land Registration Act 1925 s 52(1) (repealed); and see eg *Duke v Robson* [1973] 1 All ER 481, [1973] 1 WLR 267.

7 As to notices entered under the Land Registration Act 1925 see PARA 992 ante.

8 Ie an application under the Land Registration Act 2002 s 34(2)(a): see PARA 998 post.

9 Ibid s 134(2), Sch 12 para 2(1). For these purposes, references to the Land Registration Act 1925 include a reference to any enactment replaced (directly or indirectly) by that Act: Land Registration Act 2002 Sch 12 para 2(5).

Notwithstanding the repeal of the Land Registration Act 1925, that Act continues to have effect in relation to an application for the entry in the register of a notice which was pending immediately before 13 October 2003: Land Registration Act 2002 Sch 12 para 5. As to the previous law see PARA 992 ante. The date mentioned above is the date when the Land Registration Act 2002 Sch 13, repealing the Land Registration Act 1925 subject to transitional provisions in Sch 12, came into force: see PARA 805 note 1 ante.

10 As to land registration rules generally see PARA 1125 post.

11 Land Registration Act 2002 s 39.

12 For the meaning of 'charges register' see PARA 816 note 1 ante.

13 As to the meaning of 'registered title' see PARA 834 ante.

14 Land Registration Rules 2003, SI 2003/1417, r 84(1).

15 In the case of a notice other than a unilateral notice, the entry must give details of the interest protected (ibid r 84(3)); and in the case of a notice of a variation of an interest protected by a notice, other than a unilateral notice, the entry must give details of the variation (r 84(4)). As to unilateral notices see PARA 1001 et seq post.

16 Ibid r 84(2).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(2) NOTICES/(i) In general/996. Interests which are excluded from protection by a notice.

### **996. Interests which are excluded from protection by a notice.**

No notice<sup>1</sup> may be entered in the register<sup>2</sup> in respect of any of the following<sup>3</sup>:

- 243 (1) an interest under a trust of land<sup>4</sup> or a settlement under the Settled Land Act 1925<sup>5</sup>;
- 244 (2) a leasehold estate in land which is granted for a term of years of three years or less from the date of the grant and is not required to be registered<sup>6</sup>;
- 245 (3) a restrictive covenant made between a lessor and lessee, so far as relating to the demised premises<sup>7</sup>;
- 246 (4) an interest which is capable of being registered under the Commons Registration Act 1965<sup>8</sup>; and
- 247 (5) an interest in any coal or coal mine, the rights attached to any such interest and the rights of any person under certain provisions<sup>9</sup> of the Coal Industry Act 1994<sup>10</sup>.

Additionally, no notice may be entered in the register in respect of an interest under a PPP lease<sup>11</sup> relating to transport in London<sup>12</sup>. Nor may a notice be entered in the register in respect of an order appointing a receiver or sequestrator<sup>13</sup> or a deed of arrangement<sup>14</sup>.

1 As to the nature and effect of notices in the register see PARA 995 ante.

2 As to the register of title see PARA 811 et seq ante.

3 Land Registration Act 2002 s 33.

4 Ibid s 33(a)(i).

5 Ibid s 33(a)(ii). Subject to certain exceptions, no settlement created on or after 1 January 1997 is a settlement for the purposes of the Settled Land Act 1925: see the Trusts of Land and Appointment of Trustees Act 1996 ss 2, 27; and REAL PROPERTY vol 39(2) (Reissue) PARA 65; SETTLEMENTS vol 42 (Reissue) PARA 676.

6 Land Registration Act 2002 s 33(b). As to short leases subject to compulsory first registration see s 4(1)(c)-(f); and PARA 827 ante. As to short leases that are registrable dispositions see s 27(2)(b); and PARA 912 ante.

7 Ibid s 33(c). Cf the Land Registration Act 1925 s 50(1) (repealed), which was drafted in wider terms to exclude any restrictive covenant made between lessor and lessee; and see eg *Oceanic Village Ltd v United Attractions Ltd* [2000] Ch 234, [2000] 1 All ER 975.



8 Land Registration Act 2002 s 33(d). Cf s 27(2)(d); and PARA 912 ante. As to the Commons Registration Act 1965 see COMMONS vol 13 (2009) PARA 510 et seq.

9 The rights under the Coal Industry Act 1994 s 38 (rights to withdraw support: see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 178 et seq), s 49 (rights to work coal in former copyhold land: see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 400 et seq) or s 51 (additional rights in relation to underground land: see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 399): see the Land Registration Act 2002 s 33(e).

10 Ibid s 33(e). Such rights are unregistered interests which override both first registration (see ss 11(4)(b), 12(4)(c), Sch 1 para 7; and PARA 866 ante) and registrable dispositions (see ss 29(a)(ii), 30(2)(a)(ii), Sch 3 para 7; and PARA 962 ante).

11 For the meaning of 'PPP lease' see PARA 826 note 11 ante.

12 Land Registration Act 2002 s 90(4).

## UPDATE

### 996 Interests which are excluded from protection by a notice

TEXT AND NOTE 8--Reference to Commons Registration Act 1965 is now to Commons Act 2006 Pt 1 (ss 1-25); 2002 Act s 33(d) (amended by Commons Act 2006 Sch 5 para 8(2) (not yet in force).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(2) NOTICES/(i) In general/997. Circumstances in which a notice may be entered on the register.

### 997. Circumstances in which a notice may be entered on the register.

There are a number of circumstances in which a notice may be entered on the register<sup>1</sup> under the Land Registration Act 2002:

- 248 (1) on application to the Chief Land Registrar<sup>2</sup>;
- 249 (2) on first registration<sup>3</sup>;
- 250 (3) where it appears to the registrar that a registered estate is subject to an unregistered interest of a kind that overrides first registration and which is not excluded<sup>4</sup> from protection by the entry of a notice<sup>5</sup>;
- 251 (4) where a person is entered on the register as the proprietor of an interest under a registrable disposition of a specified<sup>6</sup> kind, in which case the entry of a notice is mandatory<sup>7</sup>; and
- 252 (5) where such an entry is necessary to update the register<sup>8</sup>.

There is particular provision made for the entry of notices in respect of petitions in bankruptcy<sup>9</sup>.

1 As to the register of title see PARA 811 et seq ante.

2 See the Land Registration Act 2002 s 34; and PARA 998 post. As to the Chief Land Registrar see PARA 1066 post.

3 See eg the Land Registration Rules 2003, SI 2003/1417, r 37(2) (notice of lease in register of registered reversion: see PARA 838 ante) and r 35(1) (entry of notice of burdens affecting the title on first registration: see PARA 844 ante).

4 Is excluded by the Land Registration Act 2002 s 33: see PARA 996 ante.

5 See *ibid* s 37; and PARA 868 ante.

6 Is an interest under a disposition falling within *ibid* s 27(2)(b)-(e): see PARA 912 ante.

7 Where a person is entered in the register as the proprietor of an interest under a disposition falling within *ibid* s 27(2)(b)-(e), the registrar must also enter a notice in the register in respect of that interest: s 38. See s 27(2), Sch 2 paras 3(2), 4(2), 5(2), 6(2), 7(2); and PARAS 916-919 ante.

8 See eg *ibid* s 65, Sch 4 para 5; and PARA 979 ante.

9 See *ibid* s 86(2); and PARA 1014 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(2) NOTICES/(i) In general/998. Application for the entry of a notice.

### **998. Application for the entry of a notice.**

A person who claims to be entitled to the benefit of an interest affecting a registered estate<sup>1</sup> or charge<sup>2</sup> may, if the interest is not excluded from protection by a notice<sup>3</sup>, apply to the Chief Land Registrar<sup>4</sup> for the entry in the register<sup>5</sup> of a notice<sup>6</sup> in respect of the interest<sup>7</sup>. Subject to rules<sup>8</sup>, such an application may be for an agreed notice<sup>9</sup> or for a unilateral notice<sup>10</sup>.

A person must not exercise this right without reasonable cause<sup>11</sup>.

1 Is an adverse right affecting the title to the estate or charge: see PARA 835 note 8 ante. For the meaning of 'registered estate' see PARA 861 note 8 ante.

2 For the meaning of 'registered charge' see PARA 861 note 3 ante.

3 As to exclusion from protection by a notice see the Land Registration Act 2002 s 33; and PARA 996 ante.

4 As to the Chief Land Registrar see PARA 1066 post.

5 As to the register of title see PARA 811 et seq ante.

6 As to the nature and effect of notices in the register see PARA 995 ante.

7 Land Registration Act 2002 s 34(1). For the purposes of s 34(1), a relevant person is treated as having the benefit of the pending land action, writ or order, as appropriate: Land Registration Rules 2003, SI 2003/1417, r 172(1). For the purposes of r 172, 'a relevant person' means a person (or his assignee or chargee, if appropriate) who is taking any action or proceedings which are within the Land Registration Act 2002 s 87(1)(a) (see PARA 1019 post), or who has obtained a writ or order within s 87(1)(b) (see PARA 1019 post): Land Registration Rules 2003, SI 2003/1417, r 172(3).

Where a caution under the Land Registration Act 1925 s 54 (repealed) is lodged in respect of a person's estate, right, interest or claim, he may only make an application under the Land Registration Act 2002 s 34 in respect of that estate, right, interest or claim if he also applies to the registrar for the withdrawal of the caution: s 134(2), Sch 12 para 17.

8 As to land registration rules generally see PARA 1125 post.

9 Land Registration Act 2002 s 34(2)(a). As to agreed notices see PARA 999 post; and as to unilateral notices see PARA 1001 et seq post.

10 *Ibid* s 34(2)(b). An application for the entry in the register of a unilateral notice must be made in the form prescribed in the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form UN1: r 83. As to the use of forms generally see PARA 1087 et seq post.

11 Land Registration Act 2002 s 77(1)(b). The duty under s 77 is owed to any person who suffers damage in consequence of its breach: s 77(2).

### **UPDATE**

## 998 Application for the entry of a notice

NOTE 10--SI 2003/1417 Sch 1 Form UN1 substituted by SI 2008/1919; and amended by SI 2009/1996.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(2) NOTICES/(ii) Agreed Notices/999. Application for an agreed notice.

### (ii) Agreed Notices

#### 999. Application for an agreed notice.

A person who applies for the entry of a notice in the register<sup>1</sup> must apply for the entry of an agreed notice where the application is for:

- 253 (1) a matrimonial home rights notice<sup>2</sup>;
- 254 (2) an inheritance tax notice<sup>3</sup>;
- 255 (3) a notice in respect of an order under the Access to Neighbouring Land Act 1992<sup>4</sup>;
- 256 (4) a notice of any variation<sup>5</sup> of a lease effected by or under an order under the relevant provision<sup>6</sup> of the Landlord and Tenant Act 1987<sup>7</sup>.

Except in the case of an application for the entry of a matrimonial home rights notice or its renewal<sup>8</sup>, for which particular provision is made<sup>9</sup>, an application for the entry in the register of an agreed notice<sup>10</sup> must be made in the prescribed form<sup>11</sup>; must be accompanied, where appropriate, by the statutory consent<sup>12</sup>, and must also be accompanied, where appropriate, by sufficient evidence to satisfy the Chief Land Registrar<sup>13</sup>:

- 257 (a) that the person applying for, or consenting to the entry of, the notice is entitled to be registered as the proprietor of the registered estate or charge<sup>14</sup> affected by the interest to which the application relates; or
- 258 (b) as to the validity of the applicant's claim<sup>15</sup>.

The registrar may only approve an application for an agreed notice if:

- 259 (i) the applicant is the relevant registered proprietor<sup>16</sup>, or a person entitled to be registered as such proprietor;
- 260 (ii) the relevant registered proprietor, or a person entitled to be registered as such proprietor, consents to the entry of the notice; or
- 261 (iii) the registrar is satisfied as to the validity of the applicant's claim<sup>17</sup>.

<sup>1</sup> As to the right to apply for such an entry see PARA 998 ante. As to the register of title see PARA 811 et seq ante.

<sup>2</sup> Land Registration Rules 2003, SI 2003/1417, r 80(a). For the meaning of 'matrimonial home rights notice' see PARA 1122 note 9 post.

<sup>3</sup> Ibid r 80(b). 'Inheritance tax notice' means a notice in respect of an Inland Revenue charge arising under the Finance Act 1975 Pt III (ss 19-52) (as amended) or the Inheritance Tax Act 1984 s 237 (as amended) (see PARA 938 ante; and INHERITANCE TAXATION); Land Registration Rules 2003, SI 2003/1417, r 217(1).

- 4 Ibid r 80(c). As to orders under the Access to Neighbouring Land Act 1992 see NUISANCE vol 78 (2010) PARA 218.
- 5 le including any variation as modified by an order under the Landlord and Tenant Act 1987 s 39(4) (as amended: see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 153): see the Land Registration Rules 2003, SI 2003/1417, r 80(d).
- 6 le under the Landlord and Tenant Act 1987 s 38 (as amended): see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 152): see the Land Registration Rules 2003, SI 2003/1417, r 80(d).
- 7 Ibid r 80(d).
- 8 Ibid r 81(1) (see the text and notes 10-15 infra) does not apply to an application for the entry of a matrimonial home rights notice made under r 82 (see note 9 infra): r 81(2).
- 9 An application under the Family Law Act 1996 s 31(10)(a) (as amended) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 286) or s 32, Sch 4 para 4(3)(b) for the entry of an agreed notice in the register must be in the form prescribed in the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form MH1: r 82(1). An application to renew the registration of a matrimonial home rights notice or a matrimonial home rights caution under the Family Law Act 1996 s 32, Sch 4 para 4(3)(a) must be in the form prescribed in the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form MH2: r 82(2). An application in Sch 1 Form MH1, where the application is made under the Family Law Act 1996 s 32, Sch 4 para 4(3)(b), or in the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form MH2, must be accompanied by: (1) an office copy of the section 33(5) order; or (2) a conveyancer's certificate that he holds an office copy of the section 33(5) order: r 82(3). 'Section 33(5) order' means an order made under the Family Law Act 1996 s 33(5) (see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 293): Land Registration Rules 2003, SI 2003/1417, r 217(1). As to the use of forms generally see PARA 1087 et seq post.
- 10 le including a notice in respect of any variation of an interest protected by an agreed notice: see ibid r 81(1). As to applications for unilateral notices see PARA 998 ante.
- 11 As to the prescribed form see ibid r 81(1)(a), Sch 1 Form AN1.
- 12 Ibid r 81(1)(b). The consent referred to in the text is the consent required by the Land Registration Act 2002 s 34(3): see head (ii) in the text.
- 13 As to the Chief Land Registrar see PARA 1066 post.
- 14 For the meaning of 'registered estate' see PARA 861 note 3 ante; and for the meaning of 'registered charge' see PARA 861 note 8 ante.
- 15 Land Registration Rules 2003, SI 2003/1417, r 81(1)(c).
- 16 For this purpose, references to the relevant registered proprietor are references to the proprietor of the registered estate or charge affected by the interest to which the application relates: Land Registration Act 2002 s 34(4).
- 17 Ibid s 34(3).

## UPDATE

### 999 Application for an agreed notice

TEXT AND NOTE 2--Head (1). Now a home rights notice: SI 2003/1417 r 80(a) (amended by SI 2005/1982).

NOTES 8, 9--References to matrimonial home rights are now to home rights: SI 2003/1417 rr 81(2), 82 (amended by SI 2005/1982).

NOTE 9--Family Law Act 1996 s 32 substituted, s 31, Sch 4 further amended so as to apply provisions to civil partners: Civil Partnership Act 2004 Sch 9 paras 2, 3, 15. References to SI 2003/1417 Sch 1 Forms MH1, MH2 are now to Sch 1 Forms HR1, HR2: r 82 (amended by SI 2005/1982).

NOTE 11--SI 2003/1417 Sch 1 Form AN1 substituted: SI 2005/1982.

TEXT AND NOTE 12--SI 2003/1417 r 81(1)(b) modified: SI 2008/1750.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(2) NOTICES/(ii) Agreed Notices/1000. Cancellation of an agreed notice on application.

### **1000. Cancellation of an agreed notice on application.**

An application for the cancellation of a notice which is not a unilateral notice<sup>1</sup> or a matrimonial home rights notice<sup>2</sup> must be in the prescribed form<sup>3</sup> and must be accompanied by such evidence of the determination of the interest as will satisfy the Chief Land Registrar<sup>4</sup>. Where a person applies for cancellation of a notice in accordance with this provision and the registrar is satisfied that the interest protected by the notice has come to an end, he must cancel the notice or make an appropriate entry in the register<sup>5</sup> that that interest has come to an end<sup>6</sup>. If the interest protected by the notice has only come to an end in part, the registrar must make an appropriate entry<sup>7</sup>.

There is no prescribed form for an application to cancel a notice protecting a matrimonial home rights charge<sup>8</sup>.

1 As to unilateral notices see PARA 1001 et seq post.

2 For the meaning of 'matrimonial home rights notice' see PARA 1122 note 9 post.

3 As to the prescribed form see is the Land Registration Rules 2003, SI 2003/1417, r 87(1), Sch 1 Form CN1. As to the use of forms generally see PARA 1087 et seq post.

4 Ibid r 87(1). As to the Chief Land Registrar see PARA 1066 post.

5 As to the register of title see PARA 811 et seq ante.

6 Land Registration Rules 2003, SI 2003/1417, r 87(2).

7 Ibid r 87(3).

8 The form prescribed in ibid Sch 1 Form MH4 is available for such an application but its use continues to be optional, in accordance with the Family Law Act 1996 s 32, Sch 4 para 4 (as amended), which requires the registrar to cancel the charge if he is satisfied: (1) by the production of a certificate or other sufficient evidence, that either spouse is dead; or (2) by the production of an official copy of a decree or order of a court, that the marriage in question has been terminated otherwise than by death; or (3) by the production of an order of the court, that the spouse's matrimonial home rights constituting the charge have been terminated by the order.

## **UPDATE**

### **1000 Cancellation of an agreed notice on application**

TEXT AND NOTES--References to matrimonial home rights are now to home rights: SI 2003/1417 r 87 (amended by SI 2005/1982). If the registrar is not satisfied that the interest protected by the notice has come to an end, he may enter in the register details of the circumstances in which the applicant claims the interest has determined: SI 2003/1417 r 87(4) (added by SI 2008/1919). An application for the cancellation of a home rights notice must be made in Form HR4: SI 2003/1417 r 87A (added by SI 2008/1919).

NOTE 8--Family Law Act 1996 s 32 substituted, Sch 4 further amended so as to apply provisions to civil partners: Civil Partnership Act 2004 Sch 9 paras 3, 15.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(2) NOTICES/ (iii) Unilateral Notices/1001. Entry of a unilateral notice.

### **(iii) Unilateral Notices**

#### **1001. Entry of a unilateral notice.**

If the Chief Land Registrar<sup>1</sup> enters a notice ('a unilateral notice') in the register<sup>2</sup> in pursuance of an application<sup>3</sup> for such a notice, he must give notice of the entry to: (1) the proprietor of the registered estate<sup>4</sup> or charge<sup>5</sup> to which it relates<sup>6</sup>; and (2) such other persons as rules<sup>7</sup> may provide<sup>8</sup>. A unilateral notice must indicate that it is such a notice<sup>9</sup> and identify who is the beneficiary of the notice<sup>10</sup>.

- 1 As to the Chief Land Registrar see PARA 1066 post.
- 2 As to the register of title see PARA 811 et seq ante.
- 3 Ie an application under the Land Registration Act 2002 s 34(2)(b): see PARA 998 ante.
- 4 For the meaning of 'registered estate' see PARA 861 note 3 ante.
- 5 For the meaning of 'registered charge' see PARA 861 note 8 ante.
- 6 Land Registration Act 2002 s 35(1)(a).
- 7 As to land registration rules generally see PARA 1125 post.
- 8 Land Registration Act 2002 s 35(1)(b).
- 9 Ibid s 35(2)(a). As to agreed notices (as opposed to unilateral notices) see PARAS 999-1000 ante.
- 10 Ibid s 35(2)(b). As to the registration of new or additional beneficiaries see PARA 1002 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(2) NOTICES/ (iii) Unilateral Notices/1002. Registration of new or additional beneficiary of unilateral notice.

#### **1002. Registration of new or additional beneficiary of unilateral notice.**

A person entitled to the benefit of an interest protected by a unilateral notice<sup>1</sup> may apply to be entered in the register<sup>2</sup> in place of, or in addition to, the registered beneficiary<sup>3</sup>. The application must be in the prescribed form<sup>4</sup> and must be accompanied by such evidence of the applicant's title to the interest protected by the unilateral notice as will satisfy the Chief Land Registrar<sup>5</sup>. If an application is so made and the registrar is satisfied that the interest protected by the unilateral notice is vested:

- 262 (1) in the applicant, the registrar must enter the applicant in the register in place of the registered beneficiary<sup>6</sup>;
- 263 (2) in the applicant and the registered beneficiary, he must enter the applicant in addition to the registered beneficiary<sup>7</sup>.

Except where one of the circumstances specified below<sup>8</sup> applies, he must serve notice<sup>9</sup> of the application on the registered beneficiary before entering the applicant in the register<sup>10</sup>. He is not under any obligation to serve such notice if:

- 264 (a) the registered beneficiary signs the prescribed form or otherwise consents to the application<sup>11</sup>; or
- 265 (b) the applicant is the registered beneficiary's personal representative and the grant of probate or letters of administration accompanies the application<sup>12</sup>.

1 As to the entry of a unilateral notice see PARA 1001 ante; and as to application for such an entry see PARA 998 ante. As to agreed (as opposed to unilateral) notices see PARAS 999-1000 ante.

2 As to the register of title see PARA 811 et seq ante.

3 Land Registration Rules 2003, SI 2003/1417, r 88(1). For these purposes, 'registered beneficiary' means the person shown in the register as the beneficiary of the notice at the time an application is made under r 88(1): r 88(6).

4 Ibid r 88(2)(a). As to the prescribed form see r 88(2)(a), Sch 1 Form UN3. As to the use of forms generally see PARA 1087 et seq ante.

5 Ibid r 88(2)(b). As to the Chief Land Registrar see PARA 1066 post.

6 Ibid r 88(3)(a). This is subject to r 88(4) (see the text and notes 8-10 infra).

7 Ibid r 88(3)(b). See note 6 supra.

8 Ie the circumstances specified in ibid r 88(5): see heads (a)-(b) in the text.

9 As to service of notice generally see PARA 1130 post.

10 Land Registration Rules 2003, SI 2003/1417, r 88(4).

11 Ibid r 88(5)(a).

12 Ibid r 88(5)(b).

## UPDATE

### 1002 Registration of new or additional beneficiary of unilateral notice

NOTE 4--SI 2003/1417 Sch 1 Form UN3 substituted by SI 2008/1919; and amended by SI 2009/1996.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(2) NOTICES/ (iii) Unilateral Notices/1003. Removal of a unilateral notice.

### 1003. Removal of a unilateral notice.

The person shown in the register<sup>1</sup> as the beneficiary of a unilateral notice<sup>2</sup>, or such other person as rules<sup>3</sup> may provide, may apply to the Chief Land Registrar<sup>4</sup> for the removal of the notice from the register<sup>5</sup>. The personal representative or trustee in bankruptcy of the person shown in the register as the beneficiary of a unilateral notice may apply; and if he does so he must provide sufficient evidence to satisfy the registrar as to his appointment as personal representative or trustee in bankruptcy<sup>6</sup>.

An application for the removal of a unilateral notice from the register under these provisions must be in the prescribed form<sup>7</sup>. If the registrar is satisfied that the application is in order he must remove the notice<sup>8</sup>.

1 As to the register of title see PARA 811 et seq ante.

2 As to the entry of a unilateral notice see PARA 1001 ante; as to application for such an entry see PARA 998 ante; and as to registration of new or additional beneficiaries see PARA 1002 ante. As to agreed (as opposed to unilateral) notices see PARAS 999-1000 ante.

3 As to land registration rules generally see PARA 1125 post.

4 As to the Chief Land Registrar see PARA 1066 post.

5 Land Registration Act 2002 s 35(3).

6 Land Registration Rules 2003, SI 2003/1417, r 85(2).

7 Ibid r 85(1). As to the prescribed form see r 85(1), Sch 1 Form UN2. As to the use of forms generally see PARA 1087 et seq post.

8 Ibid r 85(3).

## UPDATE

### 1003 Removal of a unilateral notice

NOTE 7--SI 2003/1417 Sch 1 Form UN2 substituted by SI 2008/1919; and amended by SI 2009/1996.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(2) NOTICES/ (iii) Unilateral Notices/1004. Cancellation of a unilateral notice.

### 1004. Cancellation of a unilateral notice.

A person may apply to the Chief Land Registrar<sup>1</sup> for the cancellation of a unilateral notice<sup>2</sup> if he is: (1) the registered<sup>3</sup> proprietor of the estate or charge<sup>4</sup> to which the notice relates; or (2) a person entitled to be registered as the proprietor of that estate or charge<sup>5</sup>. Such an application must be made in the prescribed form<sup>6</sup> and, if made under head (2) above, must be accompanied by evidence to satisfy the registrar<sup>7</sup> of the applicant's entitlement to be registered as the proprietor of the estate or charge to which the unilateral notice the subject of the application relates<sup>8</sup>.

Where an application is made under these provisions, the registrar must give the beneficiary<sup>9</sup> notice of the application and of the effect<sup>10</sup> of a failure to exercise his right to object to the application<sup>11</sup>. If the beneficiary does not exercise his right to object to the application before the end of such period as rules<sup>12</sup> may provide<sup>13</sup>, the registrar must cancel the unilateral notice<sup>14</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 For these purposes, 'unilateral notice' means a notice entered in the register in pursuance of an application under the Land Registration Act 2002 s 34(2)(b) (see PARA 998 ante): s 36(4). As to the entry of such notices see PARA 1001 ante; as to registration of new or additional beneficiaries see PARA 1002 ante; and as to removal of such notices see PARA 1003 ante. As to agreed (as opposed to unilateral) notices see PARAS 999-1000 ante.



3 For the meaning of 'registered' see PARA 826 note 2 ante.

4 For the meaning of 'charge' see PARA 861 note 5 ante.

5 Land Registration Act 2002 s 36(1).

6 Land Registration Rules 2003, SI 2003/1417, r 86(1). As to the prescribed form see r 86(1), Sch 1 Form UN4. As to the use of forms generally see PARA 1087 et seq post.

7 Alternatively, the application may be accompanied a conveyancer's certificate that the conveyancer is satisfied that the applicant is entitled to be registered as the proprietor of the estate or charge to which the unilateral notice the subject of the application relates: *ibid* r 86(2)(b). For the meaning of 'conveyancer' see PARA 832 note 4 ante.

8 *Ibid* r 86(2)(a).

9 For these purposes, 'beneficiary', in relation to a unilateral notice, means the person shown in the register as the beneficiary of the notice, or such other person as rules may provide: Land Registration Act 2002 s 36(4). A person entitled to be registered as the beneficiary of a notice under the Land Registration Rules 2003, SI 2003/1417, r 88 (see PARA 1002 ante) may object to an application under the Land Registration Act 2002 s 36(1) for cancellation of that notice and the reference to a beneficiary in s 36(3) (see the text and notes 12-14 *infra*) includes such a person: Land Registration Rules 2003, SI 2003/1417, r 86(7).

10 *le* notice of the effect of the Land Registration Act 2002 s 36(3): see the text and notes 12-14 *infra*.

11 *Ibid* s 36(2). Only the person shown in the register as the beneficiary of the notice to which the application relates, or such other person as rules may provide, may object to the application: s 73(3). As to objections to applications generally see PARA 1081 post. The right to object must be exercised reasonably: see s 77(1)(c); and PARA 1081 post.

12 As to land registration rules generally see PARA 1125 post.

13 The period referred to in the Land Registration Act 2002 s 36(3) is the period ending at 12 noon on the fifteenth business day after the date of issue of the notice or such longer period as the registrar may allow following a request under the Land Registration Rules 2003, SI 2003/1417, r 86(4), provided that the longer period never exceeds a period ending at 12 noon on the thirtieth business day after the issue of the notice: r 86(3). Such request is one by the beneficiary to the registrar setting out why the longer period referred to should be allowed: r 86(4). If such a request is received the registrar may, if he considers it appropriate, seek the views of the person who applied for cancellation and if after considering any such views and all other relevant matters he is satisfied that a longer period should be allowed he may allow such period (not exceeding a period ending at 12 noon on the thirtieth business day after the issue of the notice) as he considers appropriate, whether or not the period is the same as any period requested by the beneficiary: r 86(4). The request referred to in r 86(3) must be made before the period ending at 12 noon on the fifteenth business day after the date of issue of the notice under the Land Registration Act 2002 s 36(2) has expired: Land Registration Rules 2003, SI 2003/1417, r 86(6). For the meaning of 'business day' see PARA 847 note 9 ante. As to the substituted periods where there has been a notice under r 216(2) see PARA 1065 post. See also note 9 *supra*.

14 Land Registration Act 2002 s 36(3).

## UPDATE

### 1004 Cancellation of a unilateral notice

TEXT AND NOTES--The court retains an inherent jurisdiction to vacate any notice registered under the 2002 Act s 34 (see PARA 998), having regard, in particular, to the balance of convenience: *Donnelly v Weybridge Construction Ltd* [2006] EWHC 348 (TCC), [2006] BLR 158. SI 2003/1417 r 86(8) added: SI 2008/1919.

TEXT AND NOTES 6-14--SI 2003/1417 r 86(8) added: SI 2009/1919.

### (3) RESTRICTIONS

#### 1005. Nature of a restriction.

A restriction is an entry in the register<sup>1</sup> regulating the circumstances in which a disposition of a registered estate<sup>2</sup> or charge<sup>3</sup> may be the subject of an entry in the register<sup>4</sup>. A restriction may, in particular<sup>5</sup>:

- 266 (1) prohibit the making of an entry in respect of any disposition, or a disposition of a kind specified in the restriction<sup>6</sup>;
- 267 (2) prohibit the making of an entry indefinitely<sup>7</sup>, for a period specified in the restriction<sup>8</sup>, or until the occurrence of an event so specified<sup>9</sup>; and the events which may be specified include<sup>10</sup>:
- 21 40. (a) the giving of notice;
- 41. (b) the obtaining of consent; and
- 42. (c) the making of an order by the court<sup>11</sup> or Chief Land Registrar<sup>12</sup>.
- 22

The entry of a restriction is to be made in relation to the registered estate or charge to which it relates<sup>13</sup>.

The Land Registration Act 2002 applies to restrictions entered under the Land Registration Act 1925 as it applies to restrictions entered under the 2002 Act<sup>14</sup>.

1 As to the register of title see PARA 811 et seq ante.

2 For the meaning of 'registered estate' see PARA 861 note 3 ante.

3 For the meaning of 'registered charge' see PARA 861 note 8 ante.

4 Land Registration Act 2002 s 40(1).

5 Heads (1) and (2) in the text are by way of example and do not qualify the generality of ibid s 40(1).

6 Ibid s 40(2)(a).

7 Ibid s 40(2)(b)(i).

8 Ibid s 40(2)(b)(ii).

9 Ibid s 40(2)(b)(iii).

10 Ie without prejudice to the generality of ibid s 40(2)(b)(iii): see s 40(3).

11 For the meaning of 'the court' see PARA 1206 post.

12 Land Registration Act 2002 s 40(3). As to the Chief Land Registrar see PARA 1066 post.

13 Ibid s 40(4).

14 Ibid s 134(2), Sch 12 para 2(2). For these purposes, references to the Land Registration Act 1925 include a reference to any enactment replaced (directly or indirectly) by that Act: Sch 12 para 2(5).

### 1006. Effect of a restriction.

Where a restriction is entered in the register<sup>1</sup>, no entry in respect of a disposition to which the restriction applies may be made in the register otherwise than in accordance with the terms of the restriction<sup>2</sup>. This is subject to any order made by the Chief Land Registrar<sup>3</sup> disapplying or modifying the restriction<sup>4</sup>.

1 As to the nature of a restriction see PARA 1005 ante. As to the register of title see PARA 811 et seq ante.

2 Land Registration Act 2002 s 41(1).

3 In any order made under ibid s 41(2): see PARA 1007 post. As to the Chief Land Registrar see PARA 1066 post.

4 See ibid s 41(1).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(3) RESTRICTIONS/1007. Application for order disapplying or modifying a restriction.

### 1007. Application for order disapplying or modifying a restriction.

The Chief Land Registrar<sup>1</sup> may by order either disapply a restriction<sup>2</sup> in relation to a disposition specified in the order or dispositions of a kind so specified<sup>3</sup>, or provide that a restriction has effect, in relation to a disposition specified in the order or dispositions of a kind so specified, with modifications specified in the order<sup>4</sup>. This power is exercisable only on the application of a person who appears to the registrar to have a sufficient interest in the restriction<sup>5</sup>.

An application to the registrar for such an order must be made in the prescribed form<sup>6</sup> and must:

- 268 (1) state whether the application is to disapply or to modify the restriction and, if the latter, give details of the modification requested<sup>7</sup>;
- 269 (2) explain why the applicant has a sufficient interest in the restriction to make the application<sup>8</sup>;
- 270 (3) give details of the disposition or the kind of dispositions that will be affected by the order<sup>9</sup>; and
- 271 (4) state why the applicant considers that the registrar should make the order<sup>10</sup>.

If requested to do so, the applicant must supply such further evidence as will satisfy the registrar that he should make the order<sup>11</sup>.

The registrar may make such inquiries and serve such notices<sup>12</sup> as he thinks fit in order to determine the application<sup>13</sup>.

A note of the terms of any order made by the registrar under these provisions must be entered in the register<sup>14</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 As to the nature and effect of a restriction see PARAS 1005-1006 ante.

3 Land Registration Act 2002 s 41(2)(a).

- 4 Ibid s 41(2)(b).
- 5 Ibid s 41(3).
- 6 Land Registration Rules 2003, SI 2003/1417, r 96(1). As to the prescribed form see r 96(1), Sch 1 Form RX2. As to the use of forms generally see PARA 1087 et seq post.
- 7 Ibid r 96(2)(a).
- 8 Ibid r 96(2)(b).
- 9 Ibid r 96(2)(c).
- 10 Ibid r 96(2)(d).
- 11 Ibid r 96(3).
- 12 As to service of notice generally see PARA 1130 post.
- 13 Land Registration Rules 2003, SI 2003/1417, r 96(4).
- 14 Ibid r 96(5).

## **UPDATE**

### **1007 Application for order disapplying or modifying a restriction**

TEXT AND NOTE 14--SI 2003/1417 r 96(5) amended: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(3) RESTRICTIONS/1008. Chief Land Registrar's power to enter a restriction.

### **1008. Chief Land Registrar's power to enter a restriction.**

The Chief Land Registrar<sup>1</sup> may enter a restriction<sup>2</sup> in the register<sup>3</sup> if it appears to him that it is necessary or desirable to do so for the purpose of:

- 272 (1) preventing invalidity or unlawfulness in relation to dispositions of a registered estate<sup>4</sup> or charge<sup>5</sup>;
- 273 (2) securing that interests which are capable of being overreached<sup>6</sup> on a disposition of a registered estate or charge are overreached<sup>7</sup>; or
- 274 (3) protecting a right or claim<sup>8</sup> in relation to a registered estate or charge<sup>9</sup>.

No restriction may, however, be entered under head (3) above for the purpose of protecting the priority of an interest which is, or could be, the subject of a notice<sup>10</sup>.

The registrar must give notice of any entry made under these provisions to the proprietor of the registered estate or charge concerned, except where the entry is made in pursuance<sup>11</sup> of an application<sup>12</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 As to the nature and effect of restrictions see PARAS 1005-1007 ante.

- 3 As to the register of title see PARA 811 et seq ante.
- 4 For the meaning of 'registered estate' see PARA 861 note 3 ante.
- 5 Land Registration Act 2002 s 42(1)(a). For the meaning of 'registered charge' see PARA 861 note 8 ante.
- 6 As to the exercise of overreaching powers on the transfer of a legal estate see REAL PROPERTY vol 39(2) (Reissue) PARA 247 et seq; SALE OF LAND vol 42 (Reissue) PARA 271.
- 7 Land Registration Act 2002 s 42(1)(b). As to the circumstances in which it is obligatory to enter restrictions for the purpose of securing that interests which are capable of being overreached on a disposition of an estate are overreached see s 44(1); and PARA 1014 post.
- 8 For these purposes, a person entitled to the benefit of a charging order relating to an interest under a trust is to be treated as having a right or claim in relation to the trust property: *ibid* s 42(4). As to charging orders see CIVIL PROCEDURE vol 12 (2009) PARA 1467 et seq; MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 636 et seq.
- 9 *Ibid* s 42(1)(c).
- 10 *Ibid* s 42(2). As to notices see PARA 995 et seq ante.
- 11 *Ie* in pursuance of an application under *ibid* s 43: see PARA 1009 post.
- 12 *Ibid* s 42(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(3) RESTRICTIONS/1009. Right to apply for the entry of a restriction.

### **1009. Right to apply for the entry of a restriction.**

A person may apply to the Chief Land Registrar<sup>1</sup> for the entry of a restriction<sup>2</sup> if:

- 275 (1) he is the relevant registered proprietor<sup>3</sup>, or a person entitled to be registered as such proprietor<sup>4</sup>;
- 276 (2) the relevant registered proprietor, or a person entitled to be registered as such proprietor, consents to the application<sup>5</sup>; or
- 277 (3) he otherwise has a sufficient interest<sup>6</sup> in the making of the entry<sup>7</sup>.

Rules<sup>8</sup> may:

- 278 (a) require the making of an application under these provisions in such circumstances, and by such person, as the rules may provide<sup>9</sup>;
- 279 (b) make provision about the form of consent for the purposes of head (2) above<sup>10</sup>;
- 280 (c) provide for classes of person to be regarded as included in head (3) above<sup>11</sup>;
- 281 (d) specify standard forms of restriction<sup>12</sup>.

A person must not exercise the right to apply for the entry of a restriction without reasonable cause<sup>13</sup>.

- 1 As to the Chief Land Registrar see PARA 1066 post.
- 2 *Ie* under the Land Registration Act 2002 s 42(1): see PARA 1008 ante.

3 For these purposes, references to the relevant registered proprietor are references to the proprietor of the registered estate or charge to which the application relates: *ibid* s 43(4). For the meaning of 'registered estate' see *PARA 861* note 3 *ante*; and for the meaning of 'registered charge' see *PARA 861* note 8 *ante*.

4 *Ibid* s 43(1)(a).

5 *Ibid* s 43(1)(b).

6 The following persons are to be regarded as included in *ibid* s 43(1)(c) (see head (3) in the text):

- 32 (1) any person who has an interest in a registered estate held under a trust of land where a sole proprietor or a survivor of joint proprietors (unless a trust corporation) will not be able to give a valid receipt for capital money, and who is applying for a restriction in the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form A to be entered in the register of that registered estate (r 93(a));
- 33 (2) any person who has sufficient interest to prevent a contravention of the Trusts of Land and Appointment of Trustees Act 1996 s 6(6) or (8) (see *TRUSTS* vol 48 (2007 Reissue) *PARA 1035*), and who is applying for a restriction in order to prevent a contravention (Land Registration Rules 2003, SI 2003/1417, r 93(b));
- 34 (3) any person who has an interest in a registered estate held under a trust of land where the powers of the trustees are limited by the Trusts of Land and Appointment of Trustees Act 1996 s 8 (see *TRUSTS* vol 48 (2007 Reissue) *PARA 1035*), and who is applying for a restriction in the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form B to be entered in the register of that registered estate (r 93(c));
- 35 (4) any person who has an interest in the due administration of the estate of a deceased person, where (a) the personal representatives of the deceased hold a registered estate on a trust of land created by the deceased's will and the personal representatives' powers are limited by the Trusts of Land and Appointment of Trustees Act 1996 s 8; and (b) he is applying for a restriction in the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form C to be entered in the register of that registered estate (r 93(d));
- 36 (5) the donee of a special power of appointment in relation to registered land affected by that power (r 93(e));
- 37 (6) the Charity Commissioners in relation to registered land held upon charitable trusts (see *CHARITIES* vol 8 (2010) *PARA 538*) (r 93(f));
- 38 (7) the Church Commissioners, the Parsonages Board or the Diocesan Board of Finance if applying for a restriction (a) to give effect to any arrangement which is made under any enactment or Measure administered by or relating to the Church Commissioners, the Parsonages Board or the Diocesan Board of Finance; or (b) to protect any interest in registered land arising under any such arrangement or statute (see *ECCLESIASTICAL LAW*) (r 93(g));
- 39 (8) any person with the benefit of a freezing order or an undertaking given in place of a freezing order who is applying for a restriction in Sch 1 Form AA or Sch 1 Form BB (r 93(h));
- 40 (9) any person who has applied for a freezing order, and who is applying for a restriction in Sch 1 Form CC or Sch 1 Form DD (r 93(i));
- 41 (10) a trustee in bankruptcy who has an interest in a beneficial interest in registered land held under a trust of land, and who is applying for a restriction in Sch 1 Form J to be entered in the register of that land (r 93(j));
- 42 (11) any person with the benefit of a charging order over a beneficial interest in registered land held under a trust of land who is applying for a restriction in Sch 1 Form K to be entered in the register of land (r 93(k));
- 43 (12) a person who has obtained a restraint order under the Terrorism Act 2000 s 23, Sch 4 para 5(1) or (2) (as substituted) or the Proceeds of Crime Act 2002 s 41 (see *SENTENCING AND DISPOSITION OF OFFENDERS* vol 92 (2010) *PARAS 423, 424*), and who is applying for a restriction in the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form EE or Sch 1 Form FF (r 93(l));
- 44 (13) a person who has applied for a restraint order under the provisions referred to in head (12) *supra*, and who is applying for a restriction in Sch 1 Form GG or Sch 1 Form HH (r 93(m));

- 45 (14) a person who has obtained an acquisition order under the Landlord and Tenant Act 1987 s 28 (as amended) (see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1786), and who is applying for a restriction in the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form L or Sch 1 Form N (r 93(n));
- 46 (15) a person who has applied for an acquisition order under the Landlord and Tenant Act 1987 s 28 (as amended), and who is applying for a restriction in the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form N (r 93(o));
- 47 (16) a person who has obtained a vesting order under the Leasehold Reform, Housing and Urban Development Act 1993 s 26(1) (as amended) or s 50(1) (see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1614), and who is applying for a restriction in the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form L or Sch 1 Form N (r 93(p));
- 48 (17) a person who has applied for a vesting order under the Leasehold Reform, Housing and Urban Development Act 1993 s 26(1) (as amended) or s 50(1), and who is applying for a restriction in Land Registration Rules 2003, SI 2003/1417, Sch 1 Form N (r 93(q));
- 49 (18) the International Criminal Court where it applies for a restriction (a) in Sch 1 Form AA or Sch 1 Form BB to give effect to a freezing order under the International Criminal Court Act 2001 s 38, Sch 6 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE; INTERNATIONAL RELATIONS LAW); (b) in the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form CC or Sch 1 Form DD to protect an application for such a freezing order (r 93(r));
- 50 (19) a receiver or a sequestrator appointed by order who applies for a restriction in Sch 1 Form L or Sch 1 Form N (r 93(s));
- 51 (20) a trustee under a deed of arrangement who applies for a restriction in Sch 1 Form L or Sch 1 Form N (r 93(t));
- 52 (21) a person who has obtained an interim receiving order under the Proceeds of Crime Act 2002 s 246 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2153) and who is applying for a restriction in the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form EE or Sch 1 Form FF (r 93(u)); and
- 53 (22) a person who has applied for an interim receiving order under the Proceeds of Crime Act 2002 s 246 and who is applying for a restriction in the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form GG or Sch 1 Form HH (r 93(v)).

As to the use of forms generally see PARA 1087 et seq post.

7 Land Registration Act 2002 s 43(1)(c). In determining whether a person has a sufficient interest in the making of an entry of a restriction under s 43(1)(c), a relevant person is treated as having the benefit of the pending land action, writ or order, as appropriate: Land Registration Rules 2003, SI 2003/1417, r 172(2). For the meaning of 'a relevant person' see PARA 998 note 7 ante; and see also PARA 1019 post.

Where a caution under the Land Registration Act 1925 s 54 (repealed) is lodged in respect of a person's estate, right, interest or claim, he may only make an application under the Land Registration Act 2002 s 43 in respect of that estate, right, interest or claim if he also applies to the registrar for the withdrawal of the caution: s 134(2), Sch 12 para 17.

8 As to land registration rules generally see PARA 1125 post.

9 Land Registration Act 2002 s 43(2)(a). See the Land Registration Rules 2003, SI 2003/1417, r 94; and PARA 1011 post.

10 Land Registration Act 2002 s 43(2)(b). See the Land Registration Rules 2003, SI 2003/1417, r 92(2); and PARA 1010 post.

11 Land Registration Act 2002 s 43(2)(c). See the Land Registration Rules 2003, SI 2003/1417, r 93; and note 6 supra.

12 Land Registration Act 2002 s 43(2)(d). The forms of restriction set out in the Land Registration Rules 2003, SI 2003/1417, r 91(1), Sch 4 are standard forms of restriction prescribed under the Land Registration Act 2002 s 43(2)(d): Land Registration Rules 2003, SI 2003/1417, r 91(1). The word 'conveyancer', where it appears in any of the standard forms of restriction, has the same meaning as in the Land Registration Rules 2003, SI 2003/1417 (see PARA 832 note 4 ante): r 91(2). The word 'registered', where it appears in any of the standard forms of restriction in relation to a disposition, means completion of the registration of that disposition by

meeting the relevant registration requirements under the Land Registration Act 2002 s 27 (see PARA 911 ante); Land Registration Rules 2003, SI 2003/1417, r 91(3).

13 Land Registration Act 2002 s 77(1)(b). The duty under s 77 is owed to any person who suffers damage in consequence of its breach: s 77(2).

## UPDATE

### 1009 Right to apply for the entry of a restriction

NOTE 6--Head (10) now a trustee in bankruptcy in whom a beneficial interest in registered land held under a trust of land has vested, and who is applying for a restriction in Form J to be entered in the register of that land: SI 2003/1417 r 93(j) (substituted by SI 2008/1919). Also, head (23) the Legal Services Commission where it has a statutory charge, created by the Legal Aid Act 1988 s 16(6) or the Access to Justice Act 1999 s 10(7), over a beneficial interest in registered land held under a trust of land and is applying for a restriction in Form JJ to be entered in the register of that land: SI 2003/1417 r 93(w) (added by SI 2005/1766). Also, head (24) a local authority where it has a statutory charge created under the Health and Social Services and Social Security Adjudications Act 1983 s 22 (see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1038) on the beneficial interest of an equitable joint tenant in a registered estate and is applying for a restriction in Form MM to be entered in the register of that estate: SI 2003/1417 r 93(x) (added by SI 2008/1919).

NOTE 12--SI 2003/1417 Sch 4 amended: SI 2005/1766, SI 2008/1919. The forms of restriction set out in SI 2003/1417 Sch 4 (as amended) may be varied, where appropriate, as permitted by r 91A (as added): r 91(1) (r 91(1) amended, r 91A added by SI 2005/1766 and amended by SI 2008/1919). Subject as follows, if a standard form of restriction is to affect part only of the registered estate, then, where it refers to a disposition, or to a disposition of a specified type, to which it applies, that reference may be followed by the words 'of the part of the registered estate' together with a sufficient description, by reference to a plan or otherwise, to identify clearly the part so affected: SI 2003/1417 r 91A(1) (r 91A as added and amended). The words incorporated under r 91A(1) are in place of the words 'of the registered estate' where those latter words appear in a standard form of restriction and are referring to a disposition, or to a disposition of a specified type, to which the restriction applies: r 91A(2) (r 91A as added and amended). The registrar may alter the words of any restriction affecting part of the registered estate that he intends to enter in the register so that such part is described by reference to the relevant title plan or in another appropriate way: r 91A(3) (r 91A as added and amended). A restriction in Form L, N, S, T, II, NN or OO may commence with the words 'Until the death of [*name*]', the words 'Until the death of the survivor of [*names of two or more persons*]', or the word 'Until' followed by a calendar date: r 91A(4) (r 91A as added and amended). A restriction in Form M, O, P or PP may commence with the word 'Until' followed by a calendar date: r 91A(5) (r 91A as added and amended). Where a restriction in Form J, K, Q, S, T, BB, DD, FF, HH, JJ LL or OO relates to a registered charge, which is one of two or more registered charges bearing the same date and affecting the same registered estate, the words 'in favour of' followed by the name of the registered proprietor of the charge must be inserted in the restriction after the date of the charge: r 91A(6) (r 91A as added and amended). Where in a standard form of restriction the word 'they' or 'their' refers to a person named in the restriction, it may be replaced as appropriate by the word 'he', 'she', 'it', 'his', 'her' or 'its': r 91A(7) (r 91A as added and amended). Where a standard form of restriction permits a type of disposition to be specified in place of the word 'disposition', the types of disposition that may be specified are 'transfer', 'lease', 'charge' or 'sub-charge', or any appropriate combination of those types': r 91A(8) (r



91A as added and amended). As to where a certificate or consent under a restriction is given by a corporation, see PARA 1009A.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(3) RESTRICTIONS/1009A. Where a certificate or consent under a restriction is given by a corporation.

**1009A. Where a certificate or consent under a restriction is given by a corporation.**

Where a certificate or written consent required by the terms of a restriction is given by a corporation aggregate, it must be signed on its behalf by (1) its clerk, secretary or other permanent officer, (2) a member of its board of directors, council or other governing body, (3) its conveyancer, or (4) its duly authorised employee or agent: Land Registration Rules 2003, SI 2003/1417, 91B(1) (r 91B added by SI 2008/1919). This rule does not apply where the certificate or written consent is given in a deed executed by the company or in a document to which the Land Registration Act 2002 s 91 (see PARA 1051) applies: SI 2003/1417 r 91B(2) (r 91B as added). The rule does not apply if a contrary intention appears in the restriction, except where the following applies: r 91B(3) (r 91B as added). Where a restriction requires a certificate or consent to be signed on behalf of a corporation aggregate by its secretary, whether or not it also permits signature by its conveyancer, and the corporation has no secretary, the certificate or consent must be signed on its behalf by a person specified in the rule: r 91B(4) (r 91B as added). A document signed on behalf of a corporation in accordance with this rule must state the full name of the signatory and the capacity in which the signatory signs: r 91B(5) (r 91B as added).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(3) RESTRICTIONS/1010. Method of application.

**1010. Method of application.**

An application for a restriction<sup>1</sup> to be entered in the register<sup>2</sup> must be made<sup>3</sup> in the prescribed form<sup>4</sup> and must be accompanied by:

- 282 (1) full details of the required restriction<sup>5</sup>;
- 283 (2) if the restriction requires notice to be given to a person, requires a person's consent or certificate, or is a standard form of restriction that refers to a named person, that person's address for service<sup>6</sup>;
- 284 (3) if the application is made with the consent of the relevant registered proprietor<sup>7</sup>, or a person entitled to be registered as such proprietor, and that consent is not given in the prescribed form, the relevant consent<sup>8</sup>;
- 285 (4) if the application is made by or with the consent of a person entitled to be registered as the relevant registered proprietor, evidence of his entitlement<sup>9</sup>; and
- 286 (5) if the application is made by a person who claims that he has a sufficient interest in the making of the entry, the required statement<sup>10</sup> signed by the applicant or his conveyancer<sup>11</sup>.

1    le an application under the Land Registration Act 2002 s 43: see PARA 1009 ante.

2    le under ibid s 42(1): see PARA 1008 ante. As to the register of title see PARA 811 et seq ante.

3     be subject to the Land Registration Rules 2003, SI 2003/1417, r 92(5), (6), (7), (8) (see notes 4, 8-9 infra): see r 92(1).

4     Ibid r 92(1). The prescribed form is Sch 1 Form RX1: see r 92(1). Rule 92(1) does not apply where: (1) a person applies for the entry of a standard form of restriction in the additional provisions panel of Sch 1 Form TP1, Form TP2, Form TP3, Form TR1, Form TR2, Form TR3, Form TR4, Form TR5, Form AS1, Form AS2 or Form AS3; (2) a person applies for the entry of a standard form of restriction in panel 7 of Sch 1 Form CH1; or (3) a person applies for the entry of a standard form of restriction in an approved charge: r 92(7). For these purposes, 'approved charge' means a charge, the form of which (including the application for the restriction) has first been approved by the Chief Land Registrar: r 92(10). As to the use of forms generally see PARA 1087 et seq post. As to the Chief Land Registrar see PARA 1066 post.

Rule 92 does not apply to an application to the registrar to give effect to an order of the court made under the Land Registration Act 2002 s 46 (see PARA 1015 post): Land Registration Rules 2003, SI 2003/1417, r 92(8).

5     Ibid r 92(2)(a).

6     Ibid r 92(2)(b). As to service of notices generally see PARA 1130 post.

7     As to the meaning of 'relevant registered proprietor' see PARA 1009 note 3 ante.

8     Land Registration Rules 2003, SI 2003/1417, r 92(2)(c). If an application is made with the consent of the relevant registered proprietor, or a person entitled to be registered as such proprietor, the registrar may accept a certificate given by a conveyancer that the conveyancer holds the relevant consent: r 92(6). For the meaning of 'conveyancer' see PARA 832 note 4 ante.

9     Ibid r 92(2)(d). The registrar may accept a certificate given by a conveyancer that the conveyancer is satisfied that the person making or consenting to the application is entitled to be registered as the relevant registered proprietor and that either: (1) the conveyancer holds the originals of the documents that contain evidence of that person's entitlement; or (2) an application for registration of that person as proprietor is pending at the Land Registry: r 92(5). As to the Land Registry see PARA 1064 et seq post.

10    The statement so required must either: (1) give details of the applicant's interest in the required restriction; or (2) if the interest is one of those specified in ibid r 93 (see PARA 1009 note 6 ante), state which of them: r 92(3).

11    Ibid r 92(2)(e). If requested to do so, such an applicant must supply further evidence to satisfy the registrar that he has a sufficient interest: r 92(4).

## **UPDATE**

### **1010 Method of application**

NOTE 4--SI 2003/1417 r 92(1) does not apply where a person applies for the entry of a standard form of restriction (1) in the additional provisions panel of Form TP1, TP2, TR1, TR2, TR4, TR5, AS1, AS2 or AS3; (2) in Form CH1 panel 8 or in an electronic legal charge; (3) in an approved charge; (4) in clause LR13 (as set out in Sch 1A) of a relevant lease, or (5) in Form A, using Form SEV: r 92(7) (substituted by SI 2008/1919). Definition of 'approved charge' now contained in SI 2003/1417 r 92(10) (substituted by SI 2005/1982). 'Relevant lease' means a prescribed clauses lease as defined in SI 2003/1417 r 58A(4) (see PARA 912), or any other lease which complies with the requirements as to form and content set out in r 58A(1) (see PARA 912) and which either is required to be completed by registration under the Land Registration Act 2002 s 27(2)(b) or is the subject of an application for first registration of the title to it: SI 2003/1417 r 92(10) substituted.

TEXT AND NOTE 6--Now, head (2) where SI 2003/1417 r 198(2)(d) (see PARA 1130) applies, the address for service of the person named in the restriction: r 92(2)(b) (substituted by SI 2005/1766).

NOTE 10--The statement so required must give details of the nature of the applicant's interest in the making of the entry of the required restriction and give details of how the applicant's interest arose: SI 2003/1417 r 92(3) (substituted by SI 2008/1919).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(3) RESTRICTIONS/1011. When an application for a restriction must be made.

**1011. When an application for a restriction must be made.**

A proprietor of a registered estate<sup>1</sup> must apply for a restriction<sup>2</sup> in the appropriate prescribed form<sup>3</sup> where:

- 287 (1) the estate becomes subject to a trust of land<sup>4</sup>, otherwise than on a registrable disposition<sup>5</sup>, and the proprietor or the survivor of joint proprietors will not be able to give a valid receipt for capital money<sup>6</sup>; or
- 288 (2) the estate is held on a trust of land and as a result of a change in the trusts, the survivor of joint proprietors will not be able to give a valid receipt for capital money<sup>7</sup>.

A sole or last surviving trustee of land held on a trust of land must, when applying to register a disposition of a registered estate in his favour or to be registered as proprietor of an unregistered estate, at the same time apply for a restriction in the appropriate prescribed form<sup>8</sup>.

Except where the registered estate in question is a legal estate held on charitable, ecclesiastical or public trusts<sup>9</sup>, a personal representative of a deceased person who holds a registered estate on a trust of land created by the deceased's will, or on a trust of land arising under the laws of intestacy which is subsequently varied, and whose powers have been limited by statute<sup>10</sup>, must apply for a restriction in the appropriate prescribed form<sup>11</sup>. Subject to the same exceptions<sup>12</sup>:

- 289 (a) a proprietor of a registered estate must apply for a restriction in the appropriate prescribed form<sup>13</sup> where either a declaration of trust of that estate imposes statutory limitations<sup>14</sup> on the powers of the trustees<sup>15</sup> or a change in the trusts on which that estate is held imposes limitations or changes the statutory limitations<sup>16</sup> on the powers of the trustees<sup>17</sup>; and
- 290 (b) an applicant for first registration<sup>18</sup> of a legal estate held on a trust of land where the powers of the trustees are limited by statute<sup>19</sup> must at the same time apply for a restriction in the appropriate prescribed form<sup>20</sup>.

Heads (a) and (b) above apply not only where the legal estate is held by the trustees, but also where it is vested in the personal representatives of a sole or last surviving trustee<sup>21</sup>.

1 For the meaning of 'registered estate' see PARA 861 note 3 ante.

2 Ie under the Land Registration Act 2002 s 43(1): see PARA 1009 ante. An application for such a restriction must be made where required by the Land Registration Rules 2003, SI 2003/1417, r 176(2), (3) (see PARA 892 ante) or r 178(2) (see PARA 890 ante).

3 As to the prescribed form see *ibid* r 94(1), Sch 1 Form A. As to the use of forms generally see PARA 1087 et seq post.

- 4 As to trusts of land see REAL PROPERTY; TRUSTS.
- 5 As to registrable dispositions see PARA 911 et seq ante.
- 6 Land Registration Rules 2003, SI 2003/1417, r 94(1)(a).
- 7 Ibid r 94(1)(b).
- 8 Ibid r 94(2). As to the prescribed form see ibid r 94(2), Sch 1 Form A.
- 9 See ibid r 94(6), which disapplies r 94(3)-(5) to legal estates held on such trusts.
- 10 Ie under the Trusts of Land and Appointment of Trustees Act 1996 s 8: see TRUSTS vol 48 (2007 Reissue) PARA 1035.
- 11 Land Registration Rules 2003, SI 2003/1417, r 94(3). As to the prescribed form see ibid r 94(3), Sch 1 Form C.
- 12 Ie subject to ibid r 94(6): see the text and note 9 supra.
- 13 As to the prescribed form see r 94(4), Sch 1 Form B.
- 14 See note 10 supra.
- 15 Land Registration Rules 2003, SI 2003/1417, r 94(4)(a).
- 16 See note 10 supra.
- 17 Land Registration Rules 2003, SI 2003/1417, r 94(4)(b).
- 18 As to first registration see PARA 826 et seq ante.
- 19 See note 10 supra.
- 20 Land Registration Rules 2003, SI 2003/1417, r 94(5). As to the prescribed form see r 94(5), Sch 1 Form B.
- 21 Ibid r 94(7).

## **UPDATE**

### **1011 When an application for a restriction must be made**

TEXT AND NOTES--SI 2003/1417 r 94 amended: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(3) RESTRICTIONS/1012. Application made otherwise than in specified form.

### **1012. Application made otherwise than in specified form.**

If an application<sup>1</sup> is made for the entry of a restriction which is not in a specified form<sup>2</sup>, the Chief Land Registrar<sup>3</sup> may only approve the application if it appears to him: (1) that the terms of the proposed restriction are reasonable<sup>4</sup>; and (2) that applying the proposed restriction would be straightforward<sup>5</sup> and would not place an unreasonable burden on him<sup>6</sup>.

1 Ie an application under the Land Registration Act 2002 s 43(1): see PARA 1009 ante.

2 Ie not in a form specified under ibid s 43(2)(d): see PARA 1009 ante.

3 As to the Chief Land Registrar see PARA 1066 post.

4 Land Registration Act 2002 s 43(3)(a).

5 Ibid s 43(3)(b)(i).

6 Ibid s 43(3)(b)(ii).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(3) RESTRICTIONS/1013. Notifiable applications.

### **1013. Notifiable applications.**

An application for the entry of a restriction<sup>1</sup> is notifiable unless it is:

291 (1) made by or with the consent of the proprietor of the registered estate<sup>2</sup> or charge<sup>3</sup> to which the application relates, or a person entitled to be registered as such proprietor<sup>4</sup>;

292 (2) made in pursuance of rules<sup>5</sup> requiring the making of an application in prescribed circumstances and by prescribed persons<sup>6</sup>; or

293 (3) an application for the entry of a restriction reflecting a limitation under an order of the court<sup>7</sup> or Chief Land Registrar<sup>8</sup>, or an undertaking given in place of such an order<sup>9</sup>.

Where an application is notifiable, the registrar must give notice of the application, and of the right to object to it<sup>10</sup>, to the proprietor of the registered estate or charge to which it relates<sup>11</sup> and to such other persons as rules may provide<sup>12</sup>.

The registrar may not determine a notifiable application before the end of such period as rules may provide, unless the person, or each of the persons, so notified has exercised his right to object to the application or given the registrar notice that he does not intend to do so<sup>13</sup>.

1 Ie an application under the Land Registration Act 2002 s 43(1): see PARA 1009 ante.

2 For the meaning of 'registered estate' see PARA 861 note 3 ante.

3 For the meaning of 'registered charge' see PARA 861 note 8 ante.

4 Land Registration Act 2002 s 45(3)(a).

5 Ie rules under ibid s 43(2)(a): see PARA 1009 ante. As to land registration rules generally see PARA 1125 post.

6 Ibid s 45(3)(b). As to the circumstances in which an application for a restriction must be made see PARA 1011 ante.

7 For the meaning of 'the court' see PARA 1206 post.

8 As to the Chief Land Registrar see PARA 1066 post.

9 Land Registration Act 2002 s 45(3)(c).

10 As to the right to object to applications generally see s 73; and PARA 1081 post. The right must be exercised reasonably: see s 77(1)(c); and PARA 1081 post.

11 Ibid s 45(1)(a).

12 Ibid s 45(1)(b). As to the giving of notices generally cf para 948 note 4 ante.

13 Ibid s 45(2). For these purposes, the period is the period ending at 12 noon on the fifteenth business day after the date of issue of the notice under the Land Registration Act 2002 s 45(1) or, if more than one such notice is issued, the date of issue of the latest notice: Land Registration Rules 2003, SI 2003/1417, r 92(9). For the meaning of 'business day' see PARA 847 note 9 ante. As to the substituted period where there has been a notice under r 216(2) see PARA 1065 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(3) RESTRICTIONS/1014. Obligatory restrictions.

### **1014. Obligatory restrictions.**

If the Chief Land Registrar<sup>1</sup> enters two or more persons in the register<sup>2</sup> as the proprietor of a registered estate<sup>3</sup> in land<sup>4</sup>, he must also enter in the register such restrictions as rules<sup>5</sup> may provide for the purpose of securing that interests which are capable of being overreached<sup>6</sup> on a disposition of the estate are overreached<sup>7</sup>.

Where under any enactment the registrar is required to enter a restriction without application, the form of the restriction must be such as rules may provide<sup>8</sup>.

Where the registrar approves an application for registration of a disposition of registered land, or of the donee's title under a disposition of unregistered land, and the instrument effecting the disposition contains a covenant limiting the freedom of the purchaser to dispose of a house situated in a national park, area of outstanding natural beauty or rural area<sup>9</sup>, he must enter in the register a restriction reflecting the limitation imposed by the covenant<sup>10</sup>. Similarly, where a local authority or housing association executes a conveyance or grant of a house situated in such an area under the right to buy legislation and the conveyance or grant contains a covenant limiting the freedom of the purchaser to dispose of the house, the registrar must enter a restriction in the register of title reflecting the limitation<sup>11</sup>; and where a registered social landlord disposes of a house situated in such an area in accordance with a consent given under the Housing Act 1996<sup>12</sup>, and the conveyance, grant or assignment contains a covenant limiting the freedom of the purchaser to dispose of the house, then if the first disposal involves registration under the Land Registration Act 2002, the registrar must enter in the register of title a restriction reflecting the limitation<sup>13</sup>.

Where the registrar approves an application for registration of a disposition of registered land, or of the donee's title under a disposition of unregistered land, and the instrument effecting the disposition is an instrument effecting a qualifying disposal preserving the right to buy of secure tenants on a disposal to a private landlord and contains the required statement to that effect under the Housing Act 1985<sup>14</sup>, he must enter in the register a restriction reflecting the statutory limitation<sup>15</sup> on subsequent disposal<sup>16</sup>.

If by a material disposal under the Housing Act 1988<sup>17</sup>, a housing action trust disposes of a house which is for the time being subject to a secure tenancy or an introductory tenancy to an approved person<sup>18</sup>, the conveyance must contain a statement that the statutory requirement<sup>19</sup> as to consent applies to a subsequent disposal of the house by the approved person<sup>20</sup>. Where the registrar approves an application for registration of a disposition of registered land, or of the approved person's title under a disposition of unregistered land, and the instrument effecting the disposition contains such a required statement, he must enter in the register a restriction reflecting the statutory limitation on subsequent disposal<sup>21</sup>.

Where consent is required for certain subsequent disposals of housing stock under the Housing Act 1988<sup>22</sup>, the instrument by which the original disposal is effected must contain a statement in a form approved by the registrar that the statutory requirement as to consent applies to a subsequent disposal of the land or house by the person to whom the original disposal was

made<sup>23</sup>. Where the registrar approves an application for registration of a disposition of registered land, or of a person's title under a disposition of unregistered land, and the instrument effecting the original disposal contains such a required statement, he must enter in the register a restriction reflecting the statutory limitation on subsequent disposal<sup>24</sup>. Similar provision is made where consent is required for subsequent disposals of housing stock under the relevant provisions<sup>25</sup> of the Local Government and Housing Act 1989<sup>26</sup>.

As soon as practicable after registration of a petition in bankruptcy as a pending action under the Land Charges Act 1972<sup>27</sup>, the registrar must enter in the register in relation to any registered estate or charge<sup>28</sup> which appears to him to be affected a notice in respect of the pending action<sup>29</sup>. As soon as practicable after registration of a bankruptcy order under the Land Charges Act 1972<sup>30</sup>, the registrar must, in relation to any registered estate or charge which appears to him to be affected by the order, enter in the register a restriction reflecting the effect of the Insolvency Act 1986<sup>31</sup>.

Provision is also made for the entry of restrictions under the Charities Act 1993<sup>32</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 As to the register of title see PARA 811 et seq ante.

3 For the meaning of 'registered estate' see PARA 861 note 3 ante.

4 As to the meaning of 'land' see PARA 826 note 4 ante.

5 As to land registration rules generally see PARA 1125 post.

6 As to the exercise of overreaching powers on the transfer of a legal estate see REAL PROPERTY vol 39(2) (Reissue) PARA 247 et seq; SALE OF LAND vol 42 (Reissue) PARA 271.

7 Land Registration Act 2002 s 44(1). As to the form of restriction see the Land Registration Rules 2003, SI 2003/1417, r 95(2)(a), Sch 1 Form A. As to the use of forms generally see PARA 1087 et seq post.

8 Land Registration Act 2002 s 44(2). The form of any restriction that the registrar is obliged to enter under any enactment must be: (1) as specified in the Land Registration Rules 2003, SI 2003/1417; (2) as required by the relevant enactment; or (3) in other cases, such form as the registrar may direct having regard to the provisions of the relevant enactment: r 95(1).

9 Ie such a covenant as is mentioned in the Housing Act 1985 s 37(1) (as amended): see HOUSING vol 22 (2006 Reissue) PARA 313. As to national parks, areas of outstanding natural beauty, etc see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 636 et seq.

10 Ibid s 37(5A) (added by the Land Registration Act 2002 s 133, Sch 11 para 18(1), (2)). As to the form of restriction see the Land Registration Rules 2003, SI 2003/1417, r 95(2)(b), Sch 1 Form U.

11 See the Housing Act 1985 s 157(7) (amended by the Land Registration Act 2002 Sch 11 para 18(1), (4)); and LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1899. As to the form of restriction see the Land Registration Rules 2003, SI 2003/1417, r 95(2)(c), Sch 1 Form V. As to the right to buy see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1795 et seq.

12 Ie a consent given under the Housing Act 1996 s 9 (as amended): see HOUSING vol 22 (2006 Reissue) PARA 106. As to registered social landlords see HOUSING vol 22 (2006 Reissue) PARA 66 et seq.

13 See ibid s 13(5) (amended by the Land Registration Act 2002 Sch 11 para 35); and HOUSING vol 22 (2006 Reissue) PARA 112. As to the form of restriction see the Land Registration Rules 2003, SI 2003/1417, r 95(2)(h), Sch 1 Form Y.

14 Ie the statement required by the Housing Act 1985 s 171G, Sch 9A para 1 (as added): see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1913. For the meaning of 'qualifying disposal' see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARAS 1901, 1913.

15 Ie the limitation under ibid s 171D(2) (as added): see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1903.

16 See *ibid* Sch 9A para 4(1), (2)(b) (Sch 9A added by the Housing and Planning Act 1986 s 8(2), (3), Sch 2; and the Housing Act 1985 Sch 9A para 4 substituted by the Land Registration Act 2002 Sch 11 para 18(1), (7)); and LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1914. As to the form of restriction see the Land Registration Rules 2003, SI 2003/1417, r 95(2)(f), Sch 1 Form W. He must also enter a notice in respect of the rights of qualifying persons under the Housing Act 1985 Pt V (ss 118-188) (as amended) in relation to dwelling-houses comprised in the disposal: see Sch 9A para 4(2)(a) (as so added and substituted). As to notices see PARA 995 *et seq ante*. If the landlord's title is registered, the landlord must apply for the entry in the register of: (1) a notice in respect of the rights of the qualifying person or persons under Pt V (as amended); and (2) a restriction reflecting the limitation under s 171D(2) (as added) on subsequent disposal: Sch 9A para 5(2) (Sch 9A as so added; and Sch 9A para 5(2) substituted by the Land Registration Act 2002 Sch 11 para 18(1), (8)).

17 For the meaning of 'material disposal' see the Housing Act 1988 s 81(2); and HOUSING vol 22 (2006 Reissue) PARA 353.

18 *Ie* to such a person as is mentioned in *ibid* s 79(2)(a) (as substituted): see HOUSING vol 22 (2006 Reissue) PARA 350. As to housing action trusts see HOUSING vol 22 (2006 Reissue) PARA 319 *et seq*. As to secure tenancies see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 1300 *et seq*; and as to introductory tenancies see HOUSING vol 22 (2006 Reissue) PARA 266 *et seq*.

19 *Ie* the requirement of *ibid* s 81 (as amended): see HOUSING vol 22 (2006 Reissue) PARA 353.

20 See *ibid* s 81(1) (as amended); and HOUSING vol 22 (2006 Reissue) PARA 353.

21 See *ibid* s 81(10) (substituted by the Land Registration Act 2002 Sch 11 para 23(1), (3)); and HOUSING vol 22 (2006 Reissue) PARA 353. As to the form of restriction see the Land Registration Rules 2003, SI 2003/1417, r 95(2)(d), Sch 1 Form X.

22 *Ie* under the Housing Act 1985 s 133 (as amended).

23 See *ibid* s 133(1), (3)(d).

24 See *ibid* s 133(9) (substituted by the Land Registration Act 2002 Sch 11 para 23(1), (6)). As to the form of restriction see the Land Registration Rules 2003, SI 2003/1417, s 95(2)(d), Sch 1 Form X.

25 *Ie* under the Local Government and Housing Act 1989 s 173 (as amended): see HOUSING vol 22 (2006 Reissue) PARA 15.

26 See *ibid* s 173(9) (substituted by the Land Registration Act 2002 Sch 11 para 24(1), (3)). As to the form of restriction see the Land Registration Rules 2003, SI 2003/1417, r 95(2)(g), Sch 1 Form X.

27 See LAND CHARGES vol 26 (2004 Reissue) PARA 647 *et seq*.

28 In the Land Registration Act 2002, references to an interest affecting an estate or charge do not include a petition in bankruptcy or bankruptcy order: s 86(1). For the meaning of 'registered charge' see PARA 861 note 8 *ante*.

29 *Ibid* s 86(2). Unless cancelled by the registrar in such manner as rules may provide, a notice entered under s 86(2) continues in force until a restriction is entered in the register under s 86(4) (see the text to note 31 *infra*), or the trustee in bankruptcy is registered as proprietor: s 86(3). See also PARA 922 *ante*.

30 See LAND CHARGES vol 26 (2004 Reissue) PARAS 647 *et seq*, 654 *et seq*.

31 Land Registration Act 2002 s 86(4). Where the proprietor of a registered estate or charge is adjudged bankrupt, the title of his trustee in bankruptcy is void as against a person to whom a registrable disposition of the estate or charge is made if: (1) the disposition is made for valuable consideration; (2) the person to whom the disposition is made acts in good faith; and (3) at the time of the disposition no notice or restriction is entered under s 86 in relation to the registered estate or charge, and the person to whom the disposition is made has no notice of the bankruptcy petition or the adjudication: s 86(5). Section 86(5) only applies if the relevant requirements are met in relation to the disposition, but, when they are met, has effect from the date of the disposition: s 86(6). Nothing in s 86 requires a person to whom a registrable disposition is made to make any search under the Land Charges Act 1972: Land Registration Act 2002 s 86(7). As to registrable dispositions see PARA 911 *et seq ante*. As to registration requirements on the insolvency of a proprietor see PARA 922 *ante*.

32 See PARA 892 *ante*.



Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(3) RESTRICTIONS/1015. Court's power to order entry of a restriction.

### **1015. Court's power to order entry of a restriction.**

If it appears to the court<sup>1</sup> that it is necessary or desirable to do so for the purpose of protecting a right or claim in relation to a registered estate<sup>2</sup> or charge<sup>3</sup>, it may make an order requiring the Chief Land Registrar<sup>4</sup> to enter a restriction in the register<sup>5</sup>. No such order may, however, be made for the purpose of protecting the priority of an interest which is, or could be, the subject of a notice<sup>6</sup>.

The court may include in an order under these provisions a direction that an entry made in pursuance of the order is to have overriding priority<sup>7</sup> and may make the exercise of this power subject to such terms and conditions as it thinks fit<sup>8</sup>. If an order under these provisions includes such a direction, the registrar must make such entry in the register as rules<sup>9</sup> may provide<sup>10</sup>. Any entry so required must be in such form as the registrar may determine so as to ensure that the priority of the restriction ordered by the court is apparent from the register<sup>11</sup>.

Where the making of the entry is completed by the registrar during the priority period of an official search<sup>12</sup> which was delivered before the making of the application for the entry, he must give notice<sup>13</sup> of the entry to the person who applied for the official search<sup>14</sup> unless he is satisfied that such notice is unnecessary<sup>15</sup>.

1 For the meaning of 'the court' see PARA 1206 post.

2 For the meaning of 'registered estate' see PARA 861 note 3 ante.

3 For the meaning of 'registered charge' see PARA 861 note 8 ante.

4 As to the Chief Land Registrar see PARA 1066 post.

5 Land Registration Act 2002 s 46(1). As to the register of title see PARA 811 et seq ante.

6 Ibid s 46(2). As to notices see PARA 995 et seq ante.

7 Ibid s 46(3).

8 Ibid s 46(5).

9 As to land registration rules generally see PARA 1125 post.

10 Land Registration Act 2002 s 46(4).

11 Land Registration Rules 2003, SI 2003/1417, r 100(1).

12 As to such priority periods see PARA 1110 et seq ante.

13 As to the giving of notice generally see PARA 1130 post.

14 If a conveyancer or other agent applied on behalf of that person, notice must be given to that agent: see the Land Registration Rules 2003, SI 2003/1417, r 100(2). For the meaning of 'conveyancer' see PARA 832 note 4 ante.

15 Ibid r 100(2).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(3) RESTRICTIONS/1016. Withdrawal of a restriction.

### **1016. Withdrawal of a restriction.**

A person may apply to the Chief Land Registrar<sup>1</sup> for the withdrawal of a restriction if: (1) the restriction was entered in such circumstances as rules<sup>2</sup> may provide<sup>3</sup>; and (2) he is of such a description as rules may provide<sup>4</sup>. No application may be made to withdraw a restriction:

- 294 (a) entered<sup>5</sup> by the registrar as necessary or desirable for preventing invalidity or unlawfulness in relation to dispositions of a registered estate or charge<sup>6</sup>;
- 295 (b) that is entered in the register following a mandatory application for a restriction<sup>7</sup>;
- 296 (c) that the registrar is under an obligation to enter in the register<sup>8</sup>; or
- 297 (d) that reflects a limitation under an order of the court<sup>9</sup> or registrar, or an undertaking given in place of such an order<sup>10</sup>.

An application to withdraw a restriction that requires the consent of a specified person may only be made by or with the consent<sup>11</sup> of that person<sup>12</sup>; and an application to withdraw a restriction that requires notice to be given to a specified person may only be made by or with the consent<sup>13</sup> of that person<sup>14</sup>. Subject to that, an application to withdraw a restriction may only be made by or with the consent<sup>15</sup> of all persons who appear to the registrar to have an interest in the restriction<sup>16</sup>. Such an application must be made in the prescribed form<sup>17</sup> and must be accompanied by any consents so required<sup>18</sup>.

An application to withdraw a restriction that requires a certificate to be given by a specified person may only be made by or with the consent of that person<sup>19</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 As to land registration rules generally see PARA 1125 post.

3 Land Registration Act 2002 s 47(a).

4 Ibid s 47(b).

5 Ie under ibid s 42(1)(a): see PARA 1008 ante.

6 Land Registration Rules 2003, SI 2003/1417, r 98(6)(a).

7 Ibid r 98(6)(b). As to mandatory applications see PARA 1011 ante.

8 Ibid r 98(6)(c). As to obligatory restrictions see PARA 1014 ante.

9 For the meaning of 'the court' see PARA 1206 post.

10 Land Registration Rules 2003, SI 2003/1417, r 98(6)(d).

11 The registrar may accept a certificate given by a conveyancer that the conveyancer holds the consents required: r 98(7). For the meaning of 'conveyancer' see PARA 832 note 4 ante.

12 Ibid r 98(3).

13 See note 11 supra.

14 Land Registration Rules 2003, SI 2003/1417, r 98(4).

15 See note 11 supra.

16 Land Registration Rules 2003, SI 2003/1417, r 98(2).

17 As to the prescribed form see ibid r 98(1), Sch 1 Form RX4. As to the use of forms generally see PARA 1087 et seq post.

18 Ibid r 98(1). See also note 11 supra.

19 Ibid r 98(5). See also note 11 supra.

## **UPDATE**

### **1016 Withdrawal of a restriction**

TEXT AND NOTES 5-19--SI 2003/1417 r 98 substituted: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(3) RESTRICTIONS/1017. Cancellation of a restriction on application.

### **1017. Cancellation of a restriction on application.**

An application to cancel a restriction must be made in the prescribed form<sup>1</sup> and must be accompanied by such evidence as will satisfy the Chief Land Registrar<sup>2</sup> that the restriction is no longer required<sup>3</sup>. If the registrar is satisfied that the restriction is no longer required, he must cancel the restriction<sup>4</sup>.

1 Land Registration Rules 2003, SI 2003/1417, r 97(1). As to the prescribed form see r 97(1), Sch 1 Form RX3. As to the use of forms generally see PARA 1087 et seq post.

2 As to the Chief Land Registrar see PARA 1066 post.

3 Land Registration Rules 2003, SI 2003/1417, r 97(2).

4 Ibid r 97(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(3) RESTRICTIONS/1018. Cancellation of a restriction relating to a trust.

### **1018. Cancellation of a restriction relating to a trust.**

When registering a disposition of a registered estate<sup>1</sup>, the Chief Land Registrar<sup>2</sup> must cancel a restriction entered for the purpose of protecting an interest, right or claim arising under a trust of land<sup>3</sup> if he is satisfied that the registered estate is no longer subject to that trust of land<sup>4</sup>.

1 For the meaning of 'registered estate' see PARA 861 note 3 ante. As to dispositions of registered land see PARA 911 et seq ante.

2 As to the Chief Land Registrar see PARA 1066 post.

3 As to trusts of land see generally REAL PROPERTY; TRUSTS. As to mandatory applications for a restriction to be entered when an estate becomes subject to a trust of land see PARA 1011 ante.

4 Land Registration Rules 2003, SI 2003/1417, r 99.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/4. NOTICES AND RESTRICTIONS/(4) PROTECTION OF PENDING LAND ACTIONS, WRITS, ORDERS AND DEEDS

OF ARRANGEMENT/1019. Treatment of pending land actions etc for purposes of the Land Registration Act 2002; in general.

#### **(4) PROTECTION OF PENDING LAND ACTIONS, WRITS, ORDERS AND DEEDS OF ARRANGEMENT**

##### **1019. Treatment of pending land actions etc for purposes of the Land Registration Act 2002; in general.**

Subject to certain provisions<sup>1</sup>, references in the Land Registration Act 2002 to an interest affecting an estate or charge<sup>2</sup> include:

- 298 (1) a pending land action within the meaning of the Land Charges Act 1972<sup>3</sup>;
- 299 (2) a writ or order affecting land issued or made by any court for the purposes of enforcing a judgment or recognisance, as mentioned in the relevant provision<sup>4</sup> of the Land Charges Act 1972<sup>5</sup>;
- 300 (3) an order appointing a receiver or sequestrator<sup>6</sup>; and
- 301 (4) a deed of arrangement<sup>7</sup>.

In its application to any of the matters mentioned in heads (1) to (4) above, the Land Registration Act 2002 has effect subject to such modifications as rules<sup>8</sup> may provide<sup>9</sup>. It applies as if a person<sup>10</sup> who is taking any action or proceedings which are within head (1) above, or has obtained a writ or order within head (2) above, has the benefit of the pending land action, writ or order as appropriate<sup>11</sup>.

1    Ie subject to the Land Registration Act 2002 s 87(2)-(5): see the text and note 9 infra; and PARAS 866, 962 ante, 1020 post.

2    For the meaning of 'interest affecting an estate or charge' see PARA 835 note 8 ante.

3    Land Registration Act 2002 s 87(1)(a). See further LAND CHARGES vol 26 (2004 Reissue) PARA 647 et seq.

4    Ie as mentioned in the Land Charges Act 1972 s 6(1)(a): see LAND CHARGES vol 26 (2004 Reissue) PARA 654.

5    Land Registration Act 2002 s 87(1)(b).

6    Ibid s 87(1)(c). See further CIVIL PROCEDURE vol 12 (2009) PARAS 1380 et seq, 1497 et seq.

7    Ibid s 87(1)(d). For this purpose, 'deed of arrangement' has the same meaning as in the Deeds of Arrangement Act 1914 (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 860 et seq): Land Registration Act 2002 s 87(5). References in the Land Registration Act 2002 to an interest affecting an estate or charge do not, however, include a petition in bankruptcy or bankruptcy order: see s 86(1); and PARA 1014 ante.

8    As to land registration rules generally see PARA 1125 post.

9    Land Registration Act 2002 s 87(4).

10   Or his assignee or chargee, if appropriate: see the Land Registration Rules 2003, SI 2003/1417, r 172(3). See also PARA 998 note 7 ante.

11   Ibid r 172(3).

## 1020. Protection of pending land actions etc.

Certain pending land actions, writs, orders, and deeds of arrangement<sup>1</sup> are not capable of being an unregistered interest of a person in actual occupation<sup>2</sup> overriding either first registration<sup>3</sup> or a registrable disposition<sup>4</sup>. A pending land action within the meaning of the Land Charges Act 1972<sup>5</sup> may be protected by the entry of a notice<sup>6</sup> or a restriction<sup>7</sup> on the register<sup>8</sup>, as may a writ or order affecting land which is issued or made by any court for the purposes of enforcing a judgment or recognisance, as mentioned in the relevant provision<sup>9</sup> of the Land Charges Act 1972<sup>10</sup>. However, no notice may be entered in the register in respect of an order appointing a receiver or sequestrator<sup>11</sup> or in respect of a deed of arrangement<sup>12</sup>; such interests can only be protected by the entry of a restriction<sup>13</sup>.

1    Ie the matters mentioned in the Land Registration Act 2002 s 87(1): see PARA 1019 ante.

2    Ie an interest falling within *ibid* ss 11(4)(c), 12(4)(d), Sch 1 para 2 (see PARA 866 ante) or an interest falling within ss 29(2)(a)(ii), 30(2)(a)(ii), Sch 3 para 2 (see PARA 962 ante): see s 87(3).

3    As to first registration see PARA 826 et seq ante; and as to interests overriding first registration see PARA 866 ante.

4    Land Registration Act 2002 s 87(1), (3). As to registrable dispositions see PARA 911 et seq ante; and as to interests overriding registrable dispositions see PARA 962 ante.

5    See further LAND CHARGES vol 26 (2004 Reissue) PARA 647.

6    As to notices see PARA 995 et seq ante.

7    As to restrictions see PARA 1005 et seq ante.

8    As to the register of title see PARA 811 et seq ante.

9    Ie in the Land Charges Act 1972 s 6(1)(a): see LAND CHARGES vol 26 (2004 Reissue) PARA 654.

10   Such interests were previously protected by a caution against dealings. As to the prospective abolition of such cautions see PARA 993 ante.

11   Land Registration Act 2002 s 87(2)(a).

12   *Ibid* s 87(2)(b).

13   See note 10 *supra*. As to the rationale behind the different statutory treatment of the interests mentioned in *ibid* s 87 see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 6.60.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(1) INTRODUCTION/1021. The previous law.

## 5. ADVERSE POSSESSION

### (1) INTRODUCTION

#### 1021. The previous law.

Under the legislation in force before 13 October 2003<sup>1</sup>, the Limitation Act 1980<sup>2</sup> applied to registered land in the same manner and to the same extent as it applied to unregistered land, except that where, if the land were unregistered, the estate of the person registered as proprietor would be extinguished, the estate was not extinguished. Instead, it was deemed to

be held by the registered proprietor in trust<sup>3</sup> for the person who, by virtue of that Act, had acquired title against any proprietor, but without prejudice to the estates and interests of any other person interested in the land whose estate or interest was not extinguished by the Act<sup>4</sup>. Thus where the registered proprietor of land sold it without executing a transfer, he became, on receiving the purchase money, a bare trustee of the land for the purchaser, and, after the purchaser had been in possession for 12 years, the proprietor's title was barred<sup>5</sup>. As the right of the purchaser so acquired was an overriding interest, a subsequent registered proprietor who had purchased from the former proprietor was similarly a trustee of the legal estate for the first purchaser<sup>6</sup>.

Application to be registered as proprietor under the Land Registration Act 1925 might be made by any person who claimed to have acquired title under the Limitation Act 1980 to a registered estate in the land<sup>7</sup>. On being satisfied as to the applicant's title, the registrar was obliged to enter the applicant as proprietor either with absolute, good leasehold, qualified or possessory title, as the case required, but without prejudice to any estate or interest protected by entry on the register which might not have been extinguished under the Limitation Act 1980<sup>8</sup>. Subject to those limitations, the registration had the same effect as the registration of a first proprietor<sup>9</sup>.

The proprietor, the applicant or any other interested party might apply to the court for the determination of any question arising under the provisions described above<sup>10</sup>.

These provisions were the subject of judicial criticism on the grounds, among others, that in the case of registered land the owner ought to be readily identifiable by inspection of the register and that it was illogical and disproportionate to deprive an owner of his rights simply because he had taken no active steps to evict a squatter<sup>11</sup>. They were also subject to possible challenge on the grounds that they contravened a person's right, under the Convention for the Protection of Human Rights and Fundamental Freedoms 1950<sup>12</sup>, to the peaceful enjoyment of his possessions<sup>13</sup>.

1    le the date when the Land Registration Act 2002 came into force: see PARA 805 note 1 ante.

2    The Land Registration Act 1925 referred to the 'Limitation Acts', which were defined as the Real Property Limitation Acts 1833, 1837 and 1874 and any Acts amending them: see the Land Registration Act 1925 s 3(xii) (repealed). These Acts were repealed and replaced; and the Limitation Act 1980 consolidated earlier legislation relating to the limitation of actions. References to the Limitation Acts in the Land Registration Act 1925 were therefore, in accordance with the Interpretation Act 1978 s 17(2)(a), construed as references to the Limitation Act 1980. See LIMITATION PERIODS.

3    The register thus remained conclusive as to the identity of the proprietor of the registered estate and was not to be altered until such time as the registration was annulled in association with an application for registration of the person claiming title by possession. The rights acquired, or in course of being acquired, by such person, were in the meantime protected without mention on the register as overriding interests: see the Land Registration Act 1925 s 70(1)(f), (g) (repealed).

4    Ibid s 75(1) (repealed). See *Fairweather v St Marylebone Property Co Ltd* [1963] AC 510 at 548, [1962] 2 All ER 288 at 299, HL, obiter per Lord Denning, and the doubt as to the meaning of this provision per Lord Radcliffe at 541-543 and 295-296. See also *Jessamine Investment Co v Schwartz* [1978] QB 264 at 274-275, [1976] 3 All ER 521 at 529-530, CA, per Sir John Pennycuik. Cf *Spectrum Investment Co v Holmes* [1981] 1 All ER 6 at 15, [1981] 1 WLR 221 at 231 per Browne-Wilkinson J.

The Limitation Act 1980 s 17 (extinguishment of title), which is now amended by the Land Registration Act 2002 s 135, Sch 13, was before that amendment expressly made subject to the provisions of the Land Registration Act 1925 s 75 (repealed): see LIMITATION PERIODS vol 68 (2008) PARA 1095. As to the position where a lease was surrendered to the freeholder but rights had been acquired by adverse possession see *Central London Commercial Estates Ltd v Kato Kagaku Ltd* [1998] 4 All ER 948, [1998] 46 EG 185.

5    *Bridges v Mees* [1957] Ch 475, [1957] 2 All ER 577.

6    *Bridges v Mees* [1957] Ch 475, [1957] 2 All ER 577.

7    See the Land Registration Act 1925 s 75(2) (repealed).

8 For example, a notice of restrictive covenants on the register of the old title could be carried forward to the new title granted to the applicant because restrictive covenants are not extinguished under the limitation legislation: see *Re Nisbet and Potts' Contract* [1906] 1 Ch 386.

9 Land Registration Act 1925 s 75(3) (repealed). See also *Spectrum Investment Co v Holmes* [1981] 1 All ER 6, [1981] 1 WLR 221.

10 See the Land Registration Act 1925 s 75(3) (repealed).

11 See eg *JA Pye (Oxford) Ltd v Graham* [2000] Ch 676 per Neuberger J (on appeal [2001] EWCA Civ 117, [2001] Ch 804; [2002] UKHL 30, [2003] 1 AC 419, [2002] 3 All ER 865).

12 Ie the right under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) (Cmd 8969), Protocol I art 1, as set out in the Human Rights Act 1998 s 1(3), Sch 1 Pt II art 1: see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

13 See *JA Pye (Oxford) Ltd v Graham* [2002] UKHL 30, [2003] 1 AC 419, [2002] 3 All ER 865.

## UPDATE

### 1021 The previous law

TEXT AND NOTE 13--See also *Beaulane Properties Ltd v Palmer* [2005] EWHC 817 (Ch), [2006] Ch 79 (claimant's loss of land pursuant to 1925 Act s 75 inconsistent with European Convention on Human Rights First Protocol art 1).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(1) INTRODUCTION/1022. Principal features of the new law.

### 1022. Principal features of the new law.

The Land Registration Act 2002 has introduced fundamental changes in the law of adverse possession in so far as it relates to registered land<sup>1</sup>. The relevant provisions of the Act may be summarised as follows:

- 302 (1) adverse possession, for however long, will not of itself bar the owner's title to a registered estate<sup>2</sup>;
- 303 (2) a squatter is entitled to apply to be registered as proprietor after 10 years<sup>3</sup> (rather than 12 years, as previously)<sup>4</sup> and the registered proprietor of the estate, the registered proprietor of any charge over it and certain other persons interested in the land must be notified of the application<sup>5</sup>;
- 304 (3) if the application is not opposed by any of those notified under head (2) above, the squatter will be registered as proprietor of the land<sup>6</sup>;
- 305 (4) if it is so opposed, the application will be refused, subject to limited conditions<sup>7</sup>;
- 306 (5) if the application is refused but no steps are taken to evict the squatter or regularise his position and he remains in possession for another two years, he is entitled to reapply to be registered as proprietor and will be so registered whether or not the application is opposed<sup>8</sup>;
- 307 (6) where the registered proprietor brings proceedings to recover possession from the squatter, he will succeed unless the squatter can establish certain limited exceptions corresponding to those under head (4) above<sup>9</sup>.

Particular provision is made for special cases such as Crown foreshore<sup>10</sup> and rentcharges<sup>11</sup> and there are transitional provisions protecting persons who had acquired rights under the Limitation Act 1980 before the coming into force of the Land Registration Act 2002<sup>12</sup>.

- 1 See PARA 1023 et seq post. As to the rationale behind the changes see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 14.6
- 2 See the Land Registration Act 2002 s 96; and PARA 1023 post.
- 3 See ibid s 97, Sch 6 para 1; and PARA 1025 post.
- 4 See PARA 1021 ante.
- 5 See the Land Registration Act 2002 Sch 6 para 2; and PARA 1028 post.
- 6 See ibid Sch 6 para 4; and PARA 1029 post.
- 7 See ibid Sch 6 para 5; and PARA 1029 post.
- 8 See ibid Sch 6 paras 6, 7; and PARA 1030 post.
- 9 See ibid s 98; and PARAS 1045-1046 post.
- 10 See ibid Sch 6 para 13; and PARA 1034 post.
- 11 See ibid Sch 6 para 14; and PARA 1035 et seq post.
- 12 See ibid s 134(2), Sch 11 paras 7, 11, 18; and PARAS 866, 962 ante, 1024 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(2) PERIODS OF LIMITATION DISAPPLIED/1023. Disapplication of periods of limitation.

## (2) PERIODS OF LIMITATION DISAPPLIED

### 1023. Disapplication of periods of limitation.

No period of limitation under the Limitation Act 1980 in relation to the recovery of land<sup>1</sup> runs against any person, other than a chargee, in relation to an estate in land<sup>2</sup> or rentcharge the title to which is registered<sup>3</sup>. Similarly, no period of limitation under that Act in relation to the redemption of land<sup>4</sup> runs against any person in relation to such an estate in land or rentcharge<sup>5</sup>.

Accordingly, the provision of that Act which deals with the extinction of title on the expiry of the relevant time limit<sup>6</sup> does not operate to extinguish the title of any person where, by virtue of these provisions, a period of limitation does not run against him<sup>7</sup>.

- 1 le under the Limitation Act 1980 s 15: see LIMITATION PERIODS vol 68 (2008) PARA 1025.
- 2 As to the meaning of 'land' see PARA 826 note 4 ante.
- 3 Land Registration Act 2002 s 96(1). It follows that the Limitation Act 1980 ss 29-32 (s 32 as amended) (extension or exclusion of ordinary time limits: see LIMITATION PERIODS vol 68 (2008) PARA 1168 et seq) will not apply.

The Limitation Act 1980 will, however, continue to apply: (1) where there has been adverse possession against a leasehold estate, the lease was granted for a term of 21 years or less prior to 13 October 2003, and the lease remains unregistered and took effect as an overriding interest under the Land Registration Act 1925 s 70(1)(k) (repealed); (2) where a licensee or tenant at will is seeking to recover possession as against an adverse possessor, since licensees and tenants at will are not registered proprietors and will not be protected by the



provisions of the Land Registration Act 2002 s 97, Sch 6 (see PARA 1025 et seq post); (3) where the right of re-entry with respect to a lease is not exercised within 12 years of the relevant breach (see the Limitation Act 1980 s 15(6), Sch 1 para 7; and LIMITATION PERIODS vol 68 (2008) PARA 1076). The situation described under head (1) supra will no longer arise under the Land Registration Act 2002 because leases of seven years and over are registrable (see PARAS 827 ante) and the period of seven years may be further reduced by order made by the Lord Chancellor (see PARA 1124 post). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq. As to the situation described in head (2) supra see *Asher v Whitlock* (1865) LR 1 QB 1 at 5; *Hunter v Canary Wharf Ltd* [1997] AC 655 at 703, HL, per Lord Hoffmann; *Manchester Airport plc v Dutton* [2000] QB 133, [1999] 2 All ER 675.

4 le under the Limitation Act 1980 s 16: see LIMITATION PERIODS vol 68 (2008) PARA 1129.

5 Land Registration Act 2002 s 96(2). As to the rationale behind this provision see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARAS 14.15-14.18.

The Limitation Act 1980 continues, however, to apply to claims by a mortgagee against a mortgagor in possession: see the Land Registration Act 2002 s 96(1), which excludes periods of limitation against a chargee; and the text and notes 1-3 supra. See further *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARAS 14.12-14.14.

6 le the Limitation Act 1980 s 17 (as amended): see LIMITATION PERIODS vol 68 (2008) PARA 1095.

7 Land Registration Act 2002 s 96(3). For transitional provisions see PARA 1024 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(2) PERIODS OF LIMITATION DISAPPLIED/1024. Transitional protection for rights acquired before 13 October 2003.

#### **1024. Transitional protection for rights acquired before 13 October 2003.**

For a period of three years beginning with 13 October 2003<sup>1</sup>, a right acquired under the Limitation Act 1980 before that date has effect as an unregistered interest overriding first registration<sup>2</sup>.

Where a registered estate<sup>3</sup> in land<sup>4</sup> is held in trust for a person by virtue of the previous law<sup>5</sup> immediately before 13 October 2003, he is entitled to be registered as the proprietor of the estate<sup>6</sup>. A person has a defence to any claim for the possession of land (in addition to any other defence he may have) if he is so entitled to be registered as the proprietor of an estate in the land<sup>7</sup>. Where in a claim for possession of land a court determines that a person is entitled to this defence, the court must order the Chief Land Registrar<sup>8</sup> to register him as the proprietor of the estate in relation to which he is so entitled to be registered<sup>9</sup>. A right under this provision has effect, for a period of three years beginning with 13 October 2003, as an unregistered interest overriding a registrable disposition<sup>10</sup>.

Rules<sup>11</sup> may make transitional provision for cases where a rentcharge is held in trust under the previous law<sup>12</sup> immediately before 13 October 2003<sup>13</sup>. In such a case the beneficiary of the trust may apply either to be registered as the proprietor of the rentcharge or for the registration of the rentcharge to be cancelled<sup>14</sup>.

1 le the date when the Land Registration Act 2002 came into force: see PARA 805 note 1 ante.

2 See *ibid* s 134, Sch 12 para 7; and PARA 866 ante. As to first registration see PARA 826 et seq ante.

3 For the meaning of 'registered estate' see PARA 861 note 3 ante.

4 As to the meaning of 'land' see PARA 826 note 4 ante.

5 le by virtue of the Land Registration Act 1925 s 75(1) (repealed): see PARA 1021 ante.

- 6 Land Registration Act 2002 s 134, Sch 12 para 18(1). Such entitlement is, however, to be disregarded for the purposes of s 131(1) (meaning of 'proprietor in possession': see PARA 877 note 9 ante): Sch 12 para 18(4).
- 7 Ibid Sch 12 para 18(2). As to defences to possession claims see further PARA 1045 et seq post.
- 8 As to the Chief Land Registrar see PARA 1066 post.
- 9 Land Registration Act 2002 Sch 12 para 18(3).
- 10 See ibid Sch 12 para 11; and PARA 962 ante. As to registrable dispositions see PARA 911 et seq ante.
- 11 As to land registration rules generally see PARA 1125 post.
- 12 See note 5 supra.
- 13 Land Registration Act 2002 Sch 12 para 18(5).
- 14 Land Registration Rules 2003, SI 2003/1417, r 224.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR/(i) Application for Registration/1025. Right to apply for registration.

### **(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR**

#### **(i) Application for Registration**

##### **1025. Right to apply for registration.**

A person may apply to the Chief Land Registrar<sup>1</sup> to be registered<sup>2</sup> as the proprietor of a registered estate<sup>3</sup> in land<sup>4</sup> if he has been in adverse possession<sup>5</sup> of the estate for the period of ten years ending on the date of the application<sup>6</sup>. The estate need not have been registered throughout the period of adverse possession<sup>7</sup>.

A person may also apply to the registrar to be registered as the proprietor of a registered estate in land if:

- 308 (1) he has in the period of six months ending on the date of the application ceased to be in adverse possession of the estate because of eviction by the registered proprietor, or a person claiming under the registered proprietor<sup>8</sup>;
- 309 (2) on the day before his eviction he was entitled to make an application as described above<sup>9</sup>; and
- 310 (3) the eviction was not pursuant to a judgment for possession<sup>10</sup>.

A person may not, however, make any such application if he is a defendant in proceedings which involve asserting a right to possession of the land<sup>11</sup> or if judgment for possession of the land has been given against him in the last two years<sup>12</sup>. The right to make such applications is also subject to other restrictions<sup>13</sup>.

- 1 As to the Chief Land Registrar see PARA 1066 post.
- 2 For the meaning of 'registered' see PARA 826 note 2 ante.
- 3 For the meaning of 'registered estate' see PARA 861 note 3 ante.
- 4 As to the meaning of 'land' see PARA 826 note 4 ante.

- 5 For the meaning of 'adverse possession' see PARA 1026 post.
- 6 Land Registration Act 2002 s 97, Sch 6 para 1(1). In relation to adverse possession of Crown foreshore, the required period is 60 years instead of ten years: see PARA 1034 post.
- 7 Ibid Sch 6 para 1(4).
- 8 Ibid Sch 6 para 1(2)(a). Schedule 6 para 1(2) does not apply in relation to rentcharges: see PARA 1035 post.
- 9 Ibid Sch 6 para 1(2)(b).
- 10 Ibid Sch 6 para 1(2)(c).
- 11 Ibid Sch 6 para 1(3)(a). Cf *Markfield Investments Ltd v Evans* [2001] 2 All ER 238, [2001] 1 WLR 1321, CA. As to modifications in relation to rentcharges see PARAS 1035-1036 post.
- 12 Land Registration Act 2002 Sch 6 para 1(3)(b). See also note 11 supra.
- 13 See ibid Sch 6 para 8; and PARA 1031 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR/(i) Application for Registration/1026. Meaning of 'adverse possession' in relation to an estate in land.

### **1026. Meaning of 'adverse possession' in relation to an estate in land.**

A person is in adverse possession of an estate in land<sup>1</sup> for the statutory purposes<sup>2</sup> if, but for its disapplication by the Land Registration Act 2002<sup>3</sup>, a period of limitation under the Limitation Act 1980<sup>4</sup> would run in his favour<sup>5</sup> in relation to the estate<sup>6</sup>. A person is also to be regarded for those purposes as having been in adverse possession of an estate in land:

- 311 (1) where he is the successor in title to an estate in the land, during any period of adverse possession by a predecessor in title to that estate<sup>7</sup>; or
- 312 (2) during any period of adverse possession by another person which comes between, and is continuous with, periods of adverse possession of his own<sup>8</sup>.

A person is not, however, to be regarded as being in adverse possession of an estate for the statutory purposes at any time when the estate is subject to a trust, unless the interest of each of the beneficiaries in the estate is an interest in possession<sup>9</sup>.

- 1 As to the meaning of 'land' see PARA 826 note 4 ante.
- 2 Ie for the purposes of the Land Registration Act 2002 s 97, Sch 6: see PARA 1025 ante; the text and notes 3-9 infra; and PARAS 1025 ante, 1027 et seq post.
- 3 Ie but for ibid s 96 (see PARA 1023 ante): see Sch 6 para 11(1).
- 4 Ie under the Limitation Act 1980 s 15: see LIMITATION PERIODS vol 68 (2008) PARA 1025.
- 5 In determining whether for these purposes a period of limitation would run under the Limitation Act 1980 s 15, there are to be disregarded: (1) the commencement of any legal proceedings; and (2) s 15(6), Sch 1 para 6 (rent paid to person other than true reversioner: see LIMITATION PERIODS vol 68 (2008) PARA 1063): Land Registration Act 2002 Sch 6 para 11(3).
- 6 Ibid Sch 6 para 11(1).
- 7 Ibid Sch 6 para 11(2)(a).

8 Ibid Sch 6 para 11(2)(b).

9 Ibid Sch 6 para 12.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR/(i) Application for Registration/1027. Procedure on application.

### **1027. Procedure on application.**

Rules<sup>1</sup> may make provision about the procedure to be followed pursuant to an application<sup>2</sup> for registration of an adverse possessor as proprietor<sup>3</sup>.

An application<sup>4</sup> must be in the prescribed form<sup>5</sup> and must be accompanied by:

- 313 (1) a statutory declaration<sup>6</sup> made by the applicant not more than one month before the application is taken to have been made<sup>7</sup>, together with any necessary supporting statutory declarations, to provide evidence of adverse possession<sup>8</sup> of the registered estate<sup>9</sup> in land<sup>10</sup> or rentcharge<sup>11</sup> against which the application is made for a period which if it were to continue from the date of the applicant's statutory declaration to the date of the application would be<sup>12</sup> of not less than ten years<sup>13</sup> ending on the date of the application<sup>14</sup>; and
- 314 (2) any additional evidence which the applicant considers necessary to support the claim<sup>15</sup>.

1 As to land registration rules generally see PARA 1125 post.

2 Ie an application under the Land Registration Act 2002 s 97, Sch 6: see PARAS 1025-1026 ante, 1028 et seq post.

3 Ibid Sch 6 para 15.

4 Ie an application under ibid Sch 6 para 1: see PARA 1025 ante. A reference in the Land Registration Rules 2003, SI 2003/1417, r 188 (see the text and notes 5-15 infra) to the Land Registration Act 2002 Sch 6 is, where the application is to be registered as proprietor of a registered rentcharge, to that Schedule as applied by r 191 (see PARA 1035 et seq post): r 187.

5 As to the prescribed form see the Land Registration Rules 2003, SI 2003/1417, r 188(1), Sch 1 Form ADV1. As to the use of forms generally see PARA 1087 et seq post.

6 The statutory declaration by an applicant in support of an application under the Land Registration Act 2002 Sch 6 para 1 (see PARA 1025 ante) must (in addition to the evidence of adverse possession (see head (1) in the text): (1) exhibit a plan enabling the extent of the land to be identified on the Ordnance Survey map, unless the application is to be registered as proprietor of a registered rentcharge (see PARA 1035 et seq post); (2) if reliance is placed on Sch 6 para 1(2) (see PARA 1025 ante), contain the facts relied upon with any appropriate exhibits; (3) contain confirmation that Sch 6 para 1(3) does not apply; (4) where the application is to be registered as proprietor of a registered rentcharge, contain confirmation that the proprietor of the registered rentcharge has not re-entered the land out of which the rentcharge issues; (5) contain confirmation that to the best of his knowledge the restriction on applications in Sch 6 para 8 (see PARA 1031 post) does not apply; (6) contain confirmation that to the best of his knowledge the estate or rentcharge is not, and has not been during any of the period of alleged adverse possession, subject to a trust, other than one where the interest of each of the beneficiaries is an interest in possession (see PARA 1026 ante); (7) if, should a person given notice under Sch 6 para 2 (see PARA 1028 post) require the application to be dealt with under Sch 6 para 5 (see PARA 1029 post), it is intended to rely on one or more of the conditions set out in Sch 6 para 6 (see PARA 1030 post), the facts supporting such reliance: Land Registration Rules 2003, SI 2003/1417, r 188(2). As to statutory declarations generally see CIVIL PROCEDURE vol 11 (2009) PARA 1024. As to the Ordnance Survey see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1110 et seq.

7 As to the time when an application is taken to have been made see PARA 1078 post.

- 8 For the meaning of 'adverse possession' see PARA 1026 ante.
- 9 For the meaning of 'registered estate' see PARA 861 note 3 ante.
- 10 As to the meaning of 'land' see PARA 826 note 4 ante.
- 11 For the special provisions applying to rentcharges see PARA 1035 et seq post.
- 12 Ie where the application is under the Land Registration Act 2002 Sch 6 para 1: see the Land Registration Rules 2003, SI 2003/1417, r 188(1)(a)(i).
- 13 Or 60 years, if the Land Registration Act 2002 Sch 6 para 13 (Crown foreshore: see PARA 1034 post) applies: see the Land Registration Rules 2003, SI 2003/1417, r 188(1)(a)(i).
- 14 Ibid r 188(1)(a). As to the additional contents of the statutory declaration see note 6 supra.
- 15 Ibid r 188(1)(b).

## UPDATE

### 1027 Procedure on application

TEXT AND NOTES 4-15--Evidence in support of certain applications may be given in the form of a statement of truth: SI 2003/1417 r 188 amended: SI 2008/1919.

NOTE 5--SI 2003/1417 Sch 1 Form ADV1 substituted by SI 2008/1919; and amended by SI 2009/1996.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR/(i) Application for Registration/1028. Notification of application.

### 1028. Notification of application.

The Chief Land Registrar<sup>1</sup> must give notice of an application for registration of an adverse possessor as proprietor<sup>2</sup> to:

- 315 (1) the proprietor of the estate to which the application relates<sup>3</sup>;
- 316 (2) the proprietor of any registered charge<sup>4</sup> on the estate<sup>5</sup>;
- 317 (3) where the estate is leasehold, the proprietor of any superior registered estate<sup>6</sup>;
- 318 (4) any person who is registered in accordance with rules<sup>7</sup> as a person to be notified under these provisions<sup>8</sup>; and
- 319 (5) such other persons as rules may provide<sup>9</sup>.

Notice so given must include notice of the effect of failure to require<sup>10</sup> that the applicant satisfy the statutory conditions<sup>11</sup>.

Any person who can satisfy the registrar that he has an interest in a registered estate in land<sup>12</sup> or a registered rentcharge which would be prejudiced by the registration of any other person as proprietor of that estate<sup>13</sup> or as proprietor of a registered rentcharge<sup>14</sup> may apply to be registered as a person to be notified under these provisions<sup>15</sup>. The application must be made in the prescribed form<sup>16</sup> and the registrar must enter the applicant's name in the proprietorship register<sup>17</sup> as a person entitled to be so notified<sup>18</sup>.

- 1 As to the Chief Land Registrar see PARA 1066 post.
- 2 Ie an application under the Land Registration Act 2002 s 97, Sch 6 para 1: see PARA 1025 ante.
- 3 Ibid Sch 6 para 2(1)(a).
- 4 For the meaning of 'registered charge' see PARA 861 note 8 ante.
- 5 Land Registration Act 2002 Sch 6 para 2(1)(b).
- 6 Ibid Sch 6 para 2(1)(c). For the meaning of 'registered estate' see PARA 861 note 3 ante.
- 7 As to land registration rules generally see PARA 1125 post.
- 8 Land Registration Act 2002 Sch 6 para 2(1)(d).
- 9 Ibid Sch 6 para 2(1)(e).
- 10 Ie notice of the effect of ibid Sch 6 para 4 (see PARA 1029 post): see Sch 6 para 2(2).
- 11 Ibid Sch 6 para 2(2). A form is the form prescribed by the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form NAP must accompany a notice given by the registrar under these provisions: r 190(2), (3). As to the use of forms generally see PARA 1087 et seq post.
- 12 As to the meaning of 'land' see PARA 826 note 4 ante.
- 13 Ie registration under the Land Registration Act 2002 Sch 6 (see PARAS 1025-1027 ante, 1029 et seq post): see the Land Registration Rules 2003, SI 2003/1417, r 194(1).
- 14 Ie registration under the Land Registration Act 2002 Sch 6, as applied by the Land Registration Rules 2003, SI 2003/1417, r 191 (see PARA 1035 post): see r 194(1).
- 15 Ibid r 194(1).
- 16 Ibid r 194(2). As to the prescribed form see r 194(2), Sch 1 Form ADV2.
- 17 For the meaning of 'proprietorship register' see PARA 815 note 1 ante.
- 18 Land Registration Rules 2003, SI 2003/1417, r 194(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR/(i) Application for Registration/1029. Treatment of application.

### **1029. Treatment of application.**

A person given notice of an application by an adverse possessor for registration as proprietor<sup>1</sup> may require that the application to which the notice relates be dealt with under the provisions<sup>2</sup> requiring any of the three statutory conditions to be met<sup>3</sup>. This right is exercisable by notice to the Chief Land Registrar<sup>4</sup> given before the end of such period as rules<sup>5</sup> may provide<sup>6</sup>.

If such an application is required to be dealt with in that manner, the applicant is only entitled to be registered<sup>7</sup> as the new proprietor of the estate if any of the following conditions is met<sup>8</sup>. The first condition is that: (1) it would be unconscionable because of an equity by estoppel<sup>9</sup> for the registered proprietor to seek to dispossess the applicant<sup>10</sup>; and (2) the circumstances are such that the applicant ought to be registered as the proprietor<sup>11</sup>. The second condition is that the applicant is for some other reason entitled to be registered as the proprietor of the estate (for example, under the will of a deceased proprietor or because the applicant had agreed to buy the land and had paid for it but never had the legal estate transferred to him)<sup>12</sup>. The third condition is that:

- 320 (a) the land<sup>13</sup> to which the application relates is adjacent to land belonging to the applicant<sup>14</sup>;
- 321 (b) the exact line of the boundary between the two has not been determined<sup>15</sup> under the statutory procedure<sup>16</sup>;
- 322 (c) for at least ten years of the period of adverse possession<sup>17</sup> ending on the date of the application<sup>18</sup>, the applicant or any predecessor in title reasonably believed that the land to which the application relates belonged to him<sup>19</sup>; and
- 323 (d) the estate to which the application relates was registered more than one year prior to the date of the application<sup>20</sup>.

If such an application is not required to be dealt with as described above, the applicant is entitled to be entered in the register as the new proprietor of the estate<sup>21</sup>.

1 le a person given notice under the Land Registration Act 2002 s 97, Sch 6 para 2: see PARA 1028 ante.

2 le under ibid Sch 6 para 5: see the text and notes 7-20 infra.

3 Ibid Sch 6 para 3(1).

4 As to the Chief Land Registrar see PARA 1066 post. The notice to the registrar from a person given a notice by the registrar under ibid Sch 6 para 2 must be in the form prescribed by the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form NAP and must be given to the registrar in the manner and at the address stated in the registrar's notice: see r 190(1), (3). As to the use of forms generally see PARA 1087 et seq post.

5 As to land registration rules generally see PARA 1125 post.

6 Land Registration Act 2002 Sch 6 para 3(2). For this purpose, the period is the period ending at 12 noon on the sixty-fifth business day after the issue of the notice: see the Land Registration Rules 2003, SI 2003/1417, r 189. For the meaning of 'business day' see PARA 847 note 9 ante. As to the substituted period where there has been a notice under r 216(2) see PARA 1065 post.

7 For the meaning of 'registered' see PARA 826 note 2 ante.

8 Land Registration Act 2002 Sch 6 para 5(1).

9 As to estoppel see generally ESTOPPEL.

10 Land Registration Act 2002 Sch 6 para 5(2)(a). As to modifications in relation to rentcharges see PARAS 1035, 1040 post.

11 Ibid Sch 6 para 5(2)(b).

12 Ibid Sch 6 para 5(3); and see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 14.43.

13 As to the meaning of 'land' see PARA 826 note 4 ante.

14 Land Registration Act 2002 Sch 6 para 5(4)(a). The commencement of Sch 6 para 4 was postponed for one year so that registered proprietors had a year to take proceedings or otherwise regularise the position: see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 14.103. The Land Registration Act 2002 (Commencement No 4) Order 2003, SI 2003/1725, art 2 brought the Land Registration Act 2002 Sch 6 para 5(4), (5) into force on 13 October 2004.

15 le determined under rules made under the Land Registration Act 2002 s 60: see PARAS 871-874 ante.

16 Ibid Sch 6 para 5(4)(b). See note 14 supra.

17 For the meaning of 'adverse possession' see PARA 1026 ante.

18 In relation to an application under the Land Registration Act 2002 Sch 6 para 1(2) (see PARA 1025 ante), Sch 6 para 5 has effect as if the reference in Sch 6 para 5(4)(c) (see head (c) in the text) to the date of the application were a reference to the day before the date of the applicant's eviction: Sch 6 para 5(5). See note 14 supra.

19 Ibid Sch 6 para 5(4)(c). See note 14 supra.

20 Ibid Sch 6 para 5(4)(d). See note 14 supra.

21 Ibid Sch 6 para 4.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR/(i) Application for Registration/1030. Right to make further applications for registration.

### **1030. Right to make further applications for registration.**

Where a person's application for registration as proprietor under the provisions relating to adverse possessors<sup>1</sup> is rejected, he may make a further application to be registered as the proprietor of the estate if he is in adverse possession<sup>2</sup> of the estate from the date of the application until the last day of the period of two years beginning with the date of its rejection<sup>3</sup>. A person may not, however, make an application under this provision if:

324 (1) he is a defendant in proceedings which involve asserting a right to possession of the land<sup>4</sup>;

325 (2) judgment for possession of the land has been given against him in the last two years<sup>5</sup>; or

326 (3) he has been evicted from the land pursuant to a judgment for possession<sup>6</sup>.

Such an application must be in the prescribed form<sup>7</sup> and must be accompanied by:

327 (a) a statutory declaration<sup>8</sup> made by the applicant not more than one month before the application is taken to have been made<sup>9</sup>, together with any necessary supporting statutory declarations, to provide evidence of adverse possession of the registered estate<sup>10</sup> in land<sup>11</sup> or rentcharge<sup>12</sup> against which the application is made for a period which if it were to continue from the date of the applicant's statutory declaration to the date of the application would be of not less than two years beginning with the date of rejection of the original application<sup>13</sup> and ending on the date of the application<sup>14</sup>; and

328 (b) any additional evidence which the applicant considers necessary to support the claim<sup>15</sup>.

If a person makes an application under these provisions, he is entitled to be entered in the register<sup>16</sup> as the new proprietor of the estate<sup>17</sup>.

1 I.e. an application under the Land Registration Act 2002 s 97, Sch 6 para 1: see PARAS 1025-1029 ante.

2 For the meaning of 'adverse possession' see PARA 1026 ante.

3 Land Registration Act 2002 Sch 6 para 6(1).

4 Ibid Sch 6 para 6(2)(a). As to modifications in relation to rentcharges see PARAS 1035, 1041 post.

5 Ibid Sch 6 para 6(2)(b). See also note 4 supra.

6 Ibid Sch 6 para 6(2)(c). As to rentcharges see PARAS 1034, 1041 post.



7 As to the prescribed form see the Land Registration Rules 2003, SI 2003/1417, r 188(1), Sch 1 Form ADV1. As to the use of forms generally see PARA 1087 et seq post.

8 The statutory declaration by an applicant in support of an application under the Land Registration Act 2002 Sch 6 para 6 must (in addition to the evidence of adverse possession (see head (a) in the text)): (1) exhibit a plan enabling the extent of the land or the area affected by the rentcharge to be fully identified on the Ordnance Map, unless the application is to be registered as proprietor of a registered rentcharge (see PARAS 1035, 1041 post); (2) contain full details of the previous rejected application; (3) contain confirmation that to the best of his knowledge the restriction on applications in Sch 6 para 8 (see PARA 1031 post) does not apply; (4) contain confirmation that to the best of his knowledge the estate or rentcharge is not subject to a trust, other than one where the interest of each of the beneficiaries is an interest in possession (see PARA 1026 ante); (5) contain confirmation that Sch 6 para 6(2) (see heads (1)-(3) in the text) does not apply; and (6) where the application is to be registered as proprietor of a registered rentcharge, contain confirmation that the proprietor of the registered rentcharge has not re-entered the land out of which the rentcharge issues (see PARAS 1035, 1041 post): Land Registration Rules 2003, SI 2003/1417, r 188(3). As to statutory declarations generally see CIVIL PROCEDURE vol 11 (2009) PARA 1024. As to the Ordnance Survey see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1110 et seq.

A reference in r 188 to the Land Registration Act 2002 Sch 6 is, where the application is to be registered as proprietor of a registered rentcharge, to that Schedule as applied by the Land Registration Rules 2003, SI 2003/1417, r 191 (see PARA 1035 et seq post): r 187.

9 As to when applications are taken to have been made see PARA 1078 post.

10 For the meaning of 'registered estate' see PARA 861 note 3 ante.

11 As to the meaning of 'land' see PARA 826 note 4 ante.

12 For the special provisions applying to rentcharges see PARA 1035 et seq post.

13 In the application under the Land Registration Act 2002 Sch 6 para 1 (see PARA 1025 ante): Land Registration Rules 2003, SI 2003/1417, r 188(1)(a)(ii).

14 Ibid r 188(1)(a). As to the additional contents of the statutory declaration see note 8 supra.

15 Ibid r 188(1)(b).

16 As to the register of title see PARA 811 et seq ante.

17 Land Registration Act 2002 Sch 6 para 7.

## UPDATE

### 1030 Right to make further applications for registration

NOTE 7--SI 2003/1417 Sch 1 Form ADV1 amended: SI 2009/1996.

NOTE 8--SI 2003/1417 r 187 substituted: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR/(i) Application for Registration/1031. Restriction on applications.

### 1031. Restriction on applications.

No one may apply under the provisions relating to adverse possessors<sup>1</sup> to be registered<sup>2</sup> as the proprietor of an estate in land<sup>3</sup> during, or before the end of 12 months after the end of, any period in which the existing registered proprietor is, for the purposes of the Limitation (Enemies and War Prisoners) Act 1945<sup>4</sup>, either an enemy or detained in enemy territory<sup>5</sup>. Nor may anyone apply under those provisions to be registered as the proprietor of an estate in land during any period in which the existing registered proprietor is either unable because of mental disability<sup>6</sup>

to make decisions about issues of the kind to which such an application would give rise<sup>7</sup> or unable to communicate such decisions because of mental disability or physical impairment<sup>8</sup>.

Where it appears to the Chief Land Registrar<sup>9</sup> that any such restriction applies in relation to an estate in land, he may include a note to that effect in the register<sup>10</sup>.

1    le under the Land Registration Act 2002 s 97, Sch 6: see PARAS 1025-1030 ante, 1032 et seq post.

2    For the meaning of 'registered' see PARA 826 note 2 ante.

3    As to the meaning of 'land' see PARA 826 note 4 ante.

4    As to the Limitation (Enemies and War Prisoners) Act 1945 see LIMITATION PERIODS vol 68 (2008) PARAS 1232-1234.

5    Land Registration Act 2002 Sch 6 para 8(1).

6    For these purposes, 'mental disability' means a disability or disorder of the mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental functioning: *ibid* Sch 6 para 8(3).

7    *Ibid* Sch 6 para 8(2)(a).

8    *Ibid* Sch 6 para 8(2)(b).

9    As to the Chief Land Registrar see PARA 1066 post.

10   Land Registration Act 2002 Sch 6 para 8(4).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR/(ii) Effect of Registration/1032. Effect of registration of adverse possessor as proprietor.

## **(ii) Effect of Registration**

### **1032. Effect of registration of adverse possessor as proprietor.**

Where a person is registered<sup>1</sup> as the proprietor of an estate in land<sup>2</sup> in pursuance of an application under the provisions relating to adverse possessors<sup>3</sup>, the title by virtue of adverse possession<sup>4</sup> which he had at the time of the application is extinguished<sup>5</sup>.

Such registration of a person as the proprietor of an estate in land does not affect the priority of any interest affecting the estate<sup>6</sup>. Where, however, a person is so registered as the proprietor of an estate, the estate is vested in him free of any registered charge<sup>7</sup> affecting the estate immediately before his registration<sup>8</sup>; but this does not apply where registration as proprietor is in pursuance of an application determined by reference to whether any of the three statutory conditions<sup>9</sup> applies<sup>10</sup>.

1    For the meaning of 'registered' see PARA 826 note 2 ante.

2    As to the meaning of 'land' see PARA 826 note 4 ante.

3    le an application under the Land Registration Act 2002 s 97, Sch 6: see PARAS 1025-1031 ante, 1033 et seq post.

4    For the meaning of 'adverse possession' see PARA 1026 ante. 'Title by virtue of adverse possession' refers to the common law position whereby adverse possession creates a fee simple in the possessor: see *Asher v Whitlock* (1865) LR 1 QB 1.

- 5 Land Registration Act 2002 Sch 6 para 9(1).
- 6 Ibid Sch 6 para 9(2).
- 7 For the meaning of 'registered charge' see PARA 861 note 8 ante.
- 8 Land Registration Act 2002 Sch 6 para 9(3).
- 9 Ie the conditions in ibid Sch 6 para 5: see PARA 1029 ante.
- 10 Ibid Sch 6 para 9(4).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR/(ii) Effect of Registration/1033. Apportionment and discharge of charges.

### **1033. Apportionment and discharge of charges.**

Where a registered estate<sup>1</sup> continues to be subject to a charge<sup>2</sup> notwithstanding the registration of a person as the proprietor under the provisions relating to adverse possessors<sup>3</sup>, and the charge affects property other than the estate, the proprietor of the estate may require the chargee to apportion the amount secured by the charge at that time between the estate and the other property on the basis of their respective values<sup>4</sup>. The person requiring the apportionment is entitled to a discharge of his estate from the charge on payment of: (1) the amount apportioned to the estate; and (2) the costs incurred by the chargee as a result of the apportionment<sup>5</sup>.

On a discharge under these provisions, the liability of the chargor to the chargee is reduced by the amount apportioned to the estate<sup>6</sup>.

Rules<sup>7</sup> may make provision about apportionment under these provisions and may in particular make provision about procedure, valuation, calculation of costs payable under head (2) above and payment of the costs of the chargor<sup>8</sup>.

- 1 For the meaning of 'registered estate' see PARA 861 note 3 ante.
- 2 For the meaning of 'charge' see PARA 861 note 5 ante.
- 3 Ie under the Land Registration Act 2002 s 97, Sch 6: see PARAS 1025-1032 ante, 1034-1035 post.
- 4 Ibid Sch 6 para 10(1).
- 5 Ibid Sch 6 para 10(2).
- 6 Ibid Sch 6 para 10(3).
- 7 As to land registration rules generally see PARA 1125 post.
- 8 Land Registration Act 2002 Sch 6 para 10(4). At the date at which this volume states the law, no such rules had been made.

## **UPDATE**

### **1033 Apportionment and discharge of charges**

TEXT AND NOTES 1-4--See the Land Registration Rules 2003, SI 2003/1417 (amended by SI 2008/1919), which relate to arbitration requested by proprietor (SI 2003/1417 r

194A); notice of required apportionment (r 194B); apportionment (r 194C); basis of valuation (r 194D); receipt of notice (r 194E); notice of apportionment (r 194F); and costs (r 194G).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR/(iii) Special Cases/A. ADVERSE POSSESSION OF CROWN FORESHORE/1034. Adverse possession of Crown foreshore.

### **(iii) Special Cases**

#### **A. ADVERSE POSSESSION OF CROWN FORESHORE**

##### **1034. Adverse possession of Crown foreshore.**

Where a person is in adverse possession<sup>1</sup> of an estate in land<sup>2</sup>, the estate belongs to Her Majesty in right of the Crown<sup>3</sup> the Duchy of Lancaster or the Duchy of Cornwall<sup>4</sup>, and the land consists of foreshore<sup>5</sup>, that person may only apply to the Chief Land Registrar<sup>6</sup> to be registered as the proprietor of a registered estate in that land if he has been in such adverse possession for a period of 60 years<sup>7</sup>, instead of the ten-year period applying in other cases<sup>8</sup>.

These provisions do not apply to rentcharges<sup>9</sup>.

1 For the meaning of 'adverse possession' see PARA 1026 ante.

2 As to the meaning of 'land' see PARA 826 note 4 ante.

3 As to Crown property see generally CROWN PROPERTY; and as to registration of the Crown's demesne land see PARAS 883-885 ante.

4 As to the Duchies of Lancaster and of Cornwall see CROWN PROPERTY vol 12(1) (Reissue) PARAS 300 et seq, 318 et seq.

5 For these purposes, 'foreshore' means the shore and bed of the sea and of any tidal water, below the line of the medium high tide between the spring and neap tides (Land Registration Act 2002 Sch 6 para 13(3)); and land is to be treated as foreshore if it has been foreshore at any time in the previous ten years (Sch 6 para 13(2)).

6 As to the Chief Land Registrar see PARA 1066 post.

7 I.e the Land Registration Act 2002 Sch 6 para 1(1) (see PARA 1025 ante) is to have effect as if the reference to ten years were a reference to 60 years: Sch 6 para 13(1).

8 See *ibid* Sch 6 para 13(1).

9 See PARA 1035 et seq post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR/(iii) Special Cases/B. ADVERSE POSSESSION OF REGISTERED RENTCHARGES/1035. In general.

#### **B. ADVERSE POSSESSION OF REGISTERED RENTCHARGES**

##### **1035. In general.**

Rules<sup>1</sup> must make provision to apply the provisions relating to adverse possessors<sup>2</sup> to registered<sup>3</sup> rentcharges, subject to such modifications and exceptions as the rules may provide<sup>4</sup>.

Where a person is entitled to be registered as proprietor of a registered rentcharge<sup>6</sup>, and if he were so registered, he would not be subject to a registered charge<sup>7</sup> or registered lease or other interest protected in the register<sup>8</sup> and his adverse possession is based on non-payment of rent due under the registered rentcharge<sup>9</sup>, the Chief Land Registrar<sup>10</sup> must either close the whole of the registered title<sup>11</sup> of the registered rentcharge<sup>12</sup> or cancel the registered rentcharge if the registered title to it also comprises other rentcharges<sup>13</sup>.

1 As to land registration rules generally see PARA 1125 post.

2 I.e. the Land Registration Act 2002 s 97, Sch 6 paras 1-13: see PARA 1025 et seq ante.

3 For the meaning of 'registered' see PARA 826 note 2 ante.

4 Land Registration Act 2002 Sch 6 para 14. Schedule 6 applies to the registration of an adverse possessor of a registered rentcharge in the modified form set out in the Land Registration Rules 2003, SI 2003/1417, Sch 8: r 191. See further PARA 1036 et seq post.

6 I.e. under the Land Registration Act 2002 Sch 6, as applied by the Land Registration Rules 2003, SI 2003/1417, r 191: see rr 187, 192(1)(a).

7 For the meaning of 'registered charge' see PARA 861 note 8 ante.

8 Land Registration Rules 2003, SI 2003/1417, r 192(1)(b). As to the register of title see PARA 811 et seq ante.

9 Ibid r 192(1)(c).

10 As to the Chief Land Registrar see PARA 1066 post.

11 As to the meaning of 'registered title' see PARA 834 ante.

12 Land Registration Rules 2003, SI 2003/1417, r 192(2)(a).

13 Ibid r 192(2)(b).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR/(iii) Special Cases/B. ADVERSE POSSESSION OF REGISTERED RENTCHARGES/1036. Right to apply for registration.

### **1036. Right to apply for registration.**

A person may apply to the Chief Land Registrar<sup>1</sup> to be registered<sup>2</sup> as the proprietor of a registered rentcharge if he has been in adverse possession<sup>3</sup> of the registered rentcharge for the period of ten years ending on the date of the application<sup>4</sup>.

A person may not, however, make such an application if: (1) he is a defendant in proceedings by the registered proprietor of the registered rentcharge for recovery of the rent or to enter into possession of the land<sup>5</sup> out of which the registered rentcharge issues<sup>6</sup>; (2) judgment in favour of the registered proprietor of the registered rentcharge in respect of proceedings of the nature mentioned in head (1) above has been given against him in the last two years<sup>7</sup>; or (3) the registered proprietor of the registered rentcharge of which that person was in adverse

possession has entered into possession of the land out of which the registered rentcharge issues<sup>8</sup>.

- 1 As to the Chief Land Registrar see PARA 1066 post.
- 2 For the meaning of 'registered' see PARA 826 note 2 ante.
- 3 For the meaning of 'adverse possession' see PARA 1037 post.
- 4 Land Registration Act 2002 s 97, Sch 6 para 1(1) (Sch 6 modified by the Land Registration Rules 2003, SI 2003/1417, r 191, Sch 8). For these purposes, the registered rentcharge need not have been registered throughout the period of adverse possession: Sch 6 para 1(3) (as so modified).
- 5 As to the meaning of 'land' see PARA 826 note 4 ante.
- 6 Land Registration Act 2002 Sch 6 para 1(2)(a) (as modified: see note 4 supra).
- 7 Ibid Sch 6 para 1(2)(b) (as modified: see note 4 supra).
- 8 Ibid Sch 6 para 1(2)(c) (as modified: see note 4 supra).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR/(iii) Special Cases/B. ADVERSE POSSESSION OF REGISTERED RENTCHARGES/1037. Meaning of 'adverse possession' in relation to a registered rentcharge.

### **1037. Meaning of 'adverse possession' in relation to a registered rentcharge.**

A person is in adverse possession of a registered rentcharge for the statutory purposes<sup>1</sup> if, but for its disapplication by the Land Registration Act 2002<sup>2</sup>, a period of limitation under the Limitation Act 1980<sup>3</sup> would run in his favour<sup>4</sup> in relation to the registered rentcharge<sup>5</sup>. A person is also to be regarded for those purposes as having been in adverse possession of a registered rentcharge:

- 329 (1) where he is the successor in title to the registered rentcharge, during any period of adverse possession by a predecessor in title to that registered rentcharge<sup>6</sup>; or
- 330 (2) during any period of adverse possession by another person which comes between, and is continuous with, periods of adverse possession of his own<sup>7</sup>.

A person is not to be regarded as being in adverse possession of a registered rentcharge for the statutory purposes at any time when the registered rentcharge is subject to a trust, unless the interest of each of the beneficiaries in the registered rentcharge is an interest in possession<sup>8</sup>.

- 1 I.e. for the purposes of the Land Registration Act 2002 s 97, Sch 6 (modified by the Land Registration Rules 2003, SI 2003/1417, r 191, Sch 8): see PARA 1035 ante; the text and notes 2-8 infra; and PARAS 1035 ante, 1038 et seq post. For the meaning of 'registered' see PARA 826 note 2 ante.
- 2 I.e. but for ibid s 96 (see PARA 1023 ante): see Sch 6 para 11(1) (as modified: see note 1 supra).
- 3 I.e. under the Limitation Act 1980 s 15: see LIMITATION PERIODS vol 68 (2008) PARA 1025.
- 4 In determining whether for these purposes a period of limitation would run under the Limitation Act 1980 s 15, there are to be disregarded: (1) the commencement of any legal proceedings; and (2) the provisions of s

15(6), Sch 1 para 6 (rent paid to person other than true reversioner: see LIMITATION PERIODS vol 68 (2008) PARA 1063); Land Registration Act 2002 Sch 6 para 11(3) (as modified: see note 1 supra).

5 Ibid Sch 6 para 11(1) (as modified: see note 1 supra).

6 Ibid Sch 6 para 11(2)(a) (as modified: see note 1 supra).

7 Ibid Sch 6 para 11(2)(b) (as modified: see note 1 supra).

8 Ibid Sch 6 para 12 (as modified: see note 1 supra).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR/(iii) Special Cases/B. ADVERSE POSSESSION OF REGISTERED RENTCHARGES/1038. Procedure on application.

### **1038. Procedure on application.**

The procedure for application for registration of an adverse possessor as proprietor of a registered rentcharge<sup>1</sup> is the same as the procedure for an application relating to a registered estate in land<sup>2</sup>.

1 I.e. an application under the Land Registration Act 2002 s 97, Sch 6 para 1 (Sch 6 modified by the Land Registration Rules 2003, SI 2003/1417, r 191, Sch 8): see PARA 1036 ante. For the meaning of 'registered' see PARA 826 note 2 ante.

2 See PARA 1027 ante. For the meaning of 'registered estate' see PARA 861 note 3 ante; and as to the meaning of 'land' see PARA 826 note 4 ante.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR/(iii) Special Cases/B. ADVERSE POSSESSION OF REGISTERED RENTCHARGES/1039. Notification of application.

### **1039. Notification of application.**

The Chief Land Registrar<sup>1</sup> must give notice of an application for registration of an adverse possessor as proprietor of a registered rentcharge<sup>2</sup> to:

- 331 (1) the proprietor of the registered rentcharge to which the application relates<sup>3</sup>;
- 332 (2) the proprietor of any registered charge<sup>4</sup> on the registered rentcharge<sup>5</sup>;
- 333 (3) where the registered rentcharge is leasehold, the proprietor of any superior registered rentcharge<sup>6</sup>;
- 334 (4) any person who is registered in accordance with rules<sup>7</sup> as a person to be notified under this provision<sup>8</sup>; and
- 335 (5) such other persons as rules may provide<sup>9</sup>.

Notice so given must include notice of the effect of failure to require<sup>10</sup> that the applicant satisfy the statutory conditions<sup>11</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2     le an application under the Land Registration Act 2002 s 97, Sch 6 para 1 (Sch 6 modified by the Land Registration Rules 2003, SI 2003/1417, r 191, Sch 8): see PARA 1036 ante. For the meaning of 'registered' see PARA 826 note 2 ante.

3     Ibid Sch 6 para 2(1)(a) (as modified: see note 2 supra).

4     For the meaning of 'registered charge' see PARA 861 note 8 ante.

5     Land Registration Act 2002 Sch 6 para 2(1)(b) (as modified: see note 2 supra).

6     Ibid Sch 6 para 2(1)(c) (as modified: see note 2 supra). For the meaning of 'registered estate' see PARA 861 note 3 ante.

7     As to land registration rules generally see PARA 1125 post.

8     Land Registration Act 2002 Sch 6 para 2(1)(d) (as modified: see note 2 supra). As to the use of this provision in regard to any person who can satisfy the registrar that he has an interest in a registered rentcharge which would be prejudiced by the registration of any other person as proprietor see the Land Registration Rules 2003, SI 2003/1417, r 194; and PARA 1028 text and notes 12-18 ante.

9     Land Registration Act 2002 Sch 6 para 2(1)(e) (as modified: see note 2 supra).

10    le notice of the effect of ibid Sch 6 para 4 (as modified) (see PARA 1040 post): see Sch 6 para 2(2) (as modified: see note 2 supra).

11    Ibid Sch 6 para 2(2) (as modified: see note 2 supra). A form in the form prescribed by the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form NAP must accompany a notice given by the registrar under these provisions: rr 187, 190(2), (3). As to the use of forms generally see PARA 1087 et seq post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR/(iii) Special Cases/B. ADVERSE POSSESSION OF REGISTERED RENTCHARGES/1040. Treatment of application.

### **1040. Treatment of application.**

A person given notice of an application by an adverse possessor for registration as proprietor of a registered rentcharge<sup>1</sup> may require that the application to which the notice relates be dealt with under the provisions<sup>2</sup> requiring either of the two statutory conditions to be met<sup>3</sup>. This right is exercisable by notice to the Chief Land Registrar<sup>4</sup> given before the end of such period as rules<sup>5</sup> may provide<sup>6</sup>.

If such an application is required to be dealt with in that manner, the applicant is only entitled to be registered<sup>7</sup> as the new proprietor of the registered rentcharge if either of the following conditions is met. The first condition is that: (1) it would be unconscionable because of an equity by estoppel<sup>9</sup> for the registered proprietor to seek to assert his title to the registered rentcharge against the applicant<sup>10</sup>; and (2) the circumstances are such that the applicant ought to be registered as the proprietor<sup>11</sup>. The second condition is that the applicant is for some other reason entitled to be registered as the proprietor of the registered rentcharge<sup>12</sup>.

If such an application is not required to be dealt with as described above, the applicant is entitled to be entered in the register as the new proprietor of the registered rentcharge<sup>13</sup>.

1     le a person given notice under the Land Registration Act 2002 s 97, Sch 6 para 2 (Sch 6 modified by the Land Registration Rules 2003, SI 2003/1417, r 191, Sch 8): see PARA 1039 ante.

2     le under ibid Sch 6 para 5 (as modified): see the text and notes 7-12 infra.



- 3 Ibid Sch 6 para 3(1) (as modified: see note 1 supra).
- 4 As to the Chief Land Registrar see PARA 1066 post. The notice to the registrar from a person given a notice by the registrar under ibid Sch 6 para 2 (as modified) must be in the form prescribed by the Land Registration Rules 2003, SI 2003/1417, Sch 1 Form NAP and must be given to the registrar in the manner and at the address stated in the registrar's notice: see rr 187, 190(1), (3). As to the use of forms generally see PARA 1087 et seq post.
- 5 As to land registration rules generally see PARA 1125 post.
- 6 Land Registration Act 2002 Sch 6 para 3(2) (as modified: see note 1 supra). For this purpose, the period is the period ending at 12 noon on the sixty-fifth business day after the issue of the notice: see the Land Registration Rules 2003, SI 2003/1417, rr 187, 189. For the meaning of 'business day' see PARA 847 note 9 ante.
- 7 For the meaning of 'registered' see PARA 826 note 2 ante.
- 8 Land Registration Act 2002 Sch 6 para 5(1) (as modified: see note 1 supra).
- 9 As to estoppel see generally ESTOPPEL.
- 10 Land Registration Act 2002 Sch 6 para 5(2)(a) (as modified: see note 1 supra).
- 11 Ibid Sch 6 para 5(2)(b) (as modified: see note 1 supra).
- 12 Ibid Sch 6 para 5(3) (as modified: see note 1 supra). See also PARA 1029 text to note 12 ante.
- 13 Ibid Sch 6 para 4 (as modified: see note 1 supra).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR/(iii) Special Cases/B. ADVERSE POSSESSION OF REGISTERED RENTCHARGES/1041. Right to make further application for registration.

#### **1041. Right to make further application for registration.**

Where a person's application for registration as proprietor of a registered rentcharge relating to adverse possessors<sup>1</sup> is rejected, he may make a further application to be registered as the proprietor of the registered rentcharge if he is in adverse possession<sup>2</sup> of the registered rentcharge from the date of the application until the last day of the period of two years beginning with the date of its rejection<sup>3</sup>. A person, however, may not make an application under this provision if:

- 336 (1) he is a defendant in proceedings by the registered proprietor of the registered rentcharge for recovery of the rent or to enter into possession of the land out of which the registered rentcharge issues<sup>4</sup>;
- 337 (2) judgment in favour of the registered proprietor of the registered rentcharge in respect of proceedings of the nature mentioned in head (1) above has been given against him in the last two years<sup>5</sup>; or
- 338 (3) the registered proprietor of the registered rentcharge of which that person was in adverse possession has entered into possession of the land out of which the registered rentcharge issues<sup>6</sup>.

If a person makes an application under these provisions, he is entitled to be entered in the register<sup>7</sup> as the new proprietor of the registered rentcharge<sup>8</sup>.

1 Ie an application under the Land Registration Act 2002 s 97, Sch 6 para 1 (Sch 6 modified by the Land Registration Rules 2003, SI 2003/1417, r 191, Sch 8): see PARA 1036 ante.

- 2 For the meaning of 'adverse possession' see PARA 1037 ante.
- 3 Land Registration Act 2002 Sch 6 para 6(1) (as modified: see note 1 supra). See also PARA 1030 text and notes 8-15 ante.
- 4 Ibid Sch 6 para 6(2)(a) (as modified: see note 1 supra).
- 5 Ibid Sch 6 para 6(2)(b) (as modified: see note 1 supra).
- 6 Ibid Sch 6 para 6(2)(c) (as modified: see note 1 supra).
- 7 As to the register of title see PARA 811 et seq ante.
- 8 Land Registration Act 2002 Sch 6 para 7 (as modified: see note 1 supra).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR/(iii) Special Cases/B. ADVERSE POSSESSION OF REGISTERED RENTCHARGES/1042. Restriction on applications.

#### **1042. Restriction on applications.**

No one may apply under the provisions relating to adverse possessors<sup>1</sup> to be registered<sup>2</sup> as the proprietor of a registered rentcharge during, or before the end of 12 months after the end of, any period in which the existing registered proprietor is, for the purposes of the Limitation (Enemies and War Prisoners) Act 1945<sup>3</sup>, either an enemy or detained in enemy territory<sup>4</sup>. Nor may anyone apply under those provisions to be registered as the proprietor of a registered rentcharge during any period in which the existing registered proprietor is either unable because of mental disability<sup>5</sup> to make decisions about issues of the kind to which such an application would give rise<sup>6</sup> or unable to communicate such decisions because of mental disability or physical impairment<sup>7</sup>.

Where it appears to the Chief Land Registrar<sup>8</sup> that any such restriction applies in relation to a registered rentcharge, he may include a note to that effect in the register<sup>9</sup>.

- 1 I.e. under the Land Registration Act 2002 s 97, Sch 6 (modified by the Land Registration Rules 2003, SI 2003/1417, r 191, Sch 8): see PARAS 1035-1041 ante, 1043-1044 post.
- 2 For the meaning of 'registered' see PARA 826 note 2 ante.
- 3 As to the Limitation (Enemies and War Prisoners) Act 1945 see LIMITATION PERIODS vol 68 (2008) PARAS 1232-1234.
- 4 Land Registration Act 2002 Sch 6 para 8(1) (as modified: see note 1 supra).
- 5 For these purposes, 'mental disability' means a disability or disorder of the mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental functioning: ibid Sch 6 para 8(3) (as modified: see note 1 supra).
- 6 Ibid Sch 6 para 8(2)(a) (as modified: see note 1 supra).
- 7 Ibid Sch 6 para 8(2)(b) (as modified: see note 1 supra).
- 8 As to the Chief Land Registrar see PARA 1066 post.
- 9 Land Registration Act 2002 Sch 6 para 8(4) (as modified: see note 1 supra).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR/(iii) Special Cases/B. ADVERSE POSSESSION OF REGISTERED RENTCHARGES/1043. Effect of registration.

### **1043. Effect of registration.**

Where a person is registered<sup>1</sup> as the proprietor of a registered rentcharge in pursuance of an application under the provisions relating to adverse possessors<sup>2</sup>, the title by virtue of adverse possession<sup>3</sup> which he had at the time of the application is extinguished<sup>4</sup>.

Such registration of a person as the proprietor of a registered rentcharge does not affect the priority of any interest affecting the registered rentcharge<sup>5</sup>. Where, however, a person is so registered as the proprietor of a registered rentcharge, the registered rentcharge is vested in him free of any registered charge<sup>6</sup> affecting the registered rentcharge immediately before his registration<sup>7</sup>; but this does not apply where registration as proprietor is in pursuance of an application determined by reference to whether either of the two statutory conditions<sup>8</sup> applies<sup>9</sup>.

1 For the meaning of 'registered' see PARA 826 note 2 ante.

2 I.e. an application under the Land Registration Act 2002 s 97, Sch 6 (modified by the Land Registration Rules 2003, SI 2003/1417, r 191, Sch 8): see PARAS 1035-1042 ante, 1044 post.

3 For the meaning of 'adverse possession' see PARA 1037 ante.

4 Land Registration Act 2002 Sch 6 para 9(1) (as modified: see note 2 supra).

5 Ibid Sch 6 para 9(2) (as modified: see note 2 supra).

6 For the meaning of 'registered charge' see PARA 861 note 8 ante.

7 Land Registration Act 2002 Sch 6 para 9(3) (as modified: see note 2 supra).

8 I.e. the conditions in ibid Sch 6 para 5 (as modified): see PARA 1040 ante.

9 Ibid Sch 6 para 9(4) (as modified: see note 2 supra).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(3) REGISTRATION OF ADVERSE POSSESSOR AS PROPRIETOR/(iii) Special Cases/B. ADVERSE POSSESSION OF REGISTERED RENTCHARGES/1044. Apportionment and discharge of charges.

### **1044. Apportionment and discharge of charges.**

Where a registered rentcharge continues to be subject to a charge<sup>1</sup> notwithstanding the registration of a person as the proprietor under the provisions relating to adverse possessors<sup>2</sup>, and the charge affects property other than the registered rentcharge, the proprietor of the registered rentcharge may require the chargee to apportion the amount secured by the charge at that time between the registered rentcharge and the other property on the basis of their respective values<sup>3</sup>. The person requiring the apportionment is entitled to a discharge of his registered rentcharge from the charge on payment of: (1) the amount apportioned to the registered rentcharge; and (2) the costs incurred by the chargee as a result of the apportionment<sup>4</sup>.

On a discharge under these provisions, the liability of the chargor to the chargee is reduced by the amount apportioned to the registered rentcharge<sup>5</sup>.

Rules<sup>6</sup> may make provision about apportionment under these provisions and may in particular make provision about procedure, valuation, calculation of costs payable under head (2) above and payment of the costs of the chargor<sup>7</sup>.

1 For the meaning of 'charge' see PARA 861 note 5 ante.

2 le under the Land Registration Act 2002 s 97, Sch 6 (modified by the Land Registration Rules 2003, SI 2003/1417, r 191, Sch 8): see PARAS 1035-1043 ante.

3 Ibid Sch 6 para 10(1) (as modified: see note 2 supra).

4 Ibid Sch 6 para 10(2) (as modified: see note 2 supra).

5 Ibid Sch 6 para 10(3) (as modified: see note 2 supra).

6 As to land registration rules generally see PARA 1125 post.

7 Land Registration Act 2002 Sch 6 para 10(4) (as modified: see note 2 supra). At the date at which this volume states the law, no such rules had been made.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(4) DEFENCES IN PROCEEDINGS FOR POSSESSION OF LAND/1045. Defence that person entitled to be registered as proprietor of land adjacent to his own land of which he has been in adverse possession.

#### **(4) DEFENCES IN PROCEEDINGS FOR POSSESSION OF LAND**

##### **1045. Defence that person entitled to be registered as proprietor of land adjacent to his own land of which he has been in adverse possession.**

A person has a defence to a claim<sup>1</sup> for possession of land<sup>2</sup> if:

339 (1) on the day immediately preceding that on which the claim was brought he was entitled to make an application under the provisions relating to adverse possessors<sup>3</sup> to be registered<sup>4</sup> as the proprietor of an estate in the land; and

340 (2) had he made such an application on that day, the third statutory condition<sup>5</sup> would have been satisfied<sup>6</sup>, which is that:

23

43. (a) the land to which the application related was adjacent to land belonging to the applicant<sup>7</sup>;

44. (b) the exact line of the boundary between the two had not been determined<sup>8</sup> under the statutory procedure<sup>9</sup>;

45. (c) for at least ten years of the period of adverse possession<sup>10</sup> ending on the date of the application<sup>11</sup>, the applicant or any predecessor in title reasonably believed that the land to which the application related belonged to him<sup>12</sup>; and

46. (d) the estate to which the application related was registered more than one year prior to the date of the application<sup>13</sup>.

24

This defence is additional to any other defences a person may have<sup>14</sup>.

Where in any proceedings a court determines that a person is entitled to such a defence, it must order the Chief Land Registrar<sup>15</sup> to register him as the proprietor of the estate in relation to which he is entitled to make such an application as is mentioned above<sup>16</sup>.

1 In civil proceedings the term now generally used is 'claim' rather than 'action': see CIVIL PROCEDURE vol 11 (2009) PARA 18.

2 As to the meaning of 'land' see PARA 826 note 4 ante.

3 Ie under the Land Registration Act 2002 s 97, Sch 6 para 1: see PARA 1025 ante.

4 For the meaning of 'registered' see PARA 826 note 2 ante.

5 Ie the condition in the Land Registration Act 2002 Sch 6 para 5(4): see PARA 1029 ante.

6 Ibid s 98(1). Section 98(1) came into force on 13 October 2004: see the Land Registration Act 2002 (Commencement No 4) Order 2003, SI 2003/1725, art 2.

7 See the Land Registration Act 2002 Sch 6 para 5(4)(a); and PARA 1029 ante.

8 Ie determined under rules made under ibid s 60: see PARAS 871-874 ante.

9 See ibid Sch 6 para 5(4)(b); and PARA 1029 ante.

10 For the meaning of 'adverse possession' see PARA 1026 ante.

11 In relation to an application under the Land Registration Act 2002 Sch 6 para 1(2) (see PARA 1025 ante), Sch 6 para 5 has effect as if the reference in Sch 6 para 5(4)(c) (see head (c) in the text) to the date of the application were a reference to the day before the date of the applicant's eviction: Sch 6 para 5(5).

12 See ibid Sch 6 para 5(4)(c); and PARA 1029 ante.

13 See ibid Sch 6 para 5(4)(d); and PARA 1029 ante.

14 Ibid s 98(6).

15 As to the Chief Land Registrar see PARA 1066 post.

16 Land Registration Act 2002 s 98(5)(a).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(4) DEFENCES IN PROCEEDINGS FOR POSSESSION OF LAND/1046. Defence that person entitled to make further application for registration as proprietor.

#### **1046. Defence that person entitled to make further application for registration as proprietor.**

A person has a defence to a claim<sup>1</sup> for possession of land<sup>2</sup> if on the day immediately preceding that on which the claim was brought he was entitled to make an application<sup>3</sup> to be registered as the proprietor of an estate in the land<sup>4</sup> on the grounds that he had been in adverse possession of the land for a period of two years from the date when a previous application made by him had been rejected<sup>5</sup>. This defence is additional to any other defences a person may have<sup>6</sup>.

Where in any proceedings a court determines that a person is entitled to such a defence, it must order the Chief Land Registrar<sup>7</sup> to register him as the proprietor of the estate in relation to which he is entitled to make such an application<sup>8</sup>.

1 In civil proceedings the term now generally used is 'claim' rather than 'action': see CIVIL PROCEDURE vol 11 (2009) PARA 18.

- 2 As to the meaning of 'land' see PARA 826 note 4 ante.
- 3 Ie an application under the Land Registration Act 2002 s 97, Sch 6 para 6: see PARA 1030 ante.
- 4 Ibid s 98(3).
- 5 See ibid Sch 6 para 6; and PARA 1030 ante.
- 6 Ibid s 98(6).
- 7 As to the Chief Land Registrar see PARA 1066 post.
- 8 Land Registration Act 2002 s 98(5)(a).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(4) DEFENCES IN PROCEEDINGS FOR POSSESSION OF LAND/1047. Circumstances in which judgment for possession ceases to be enforceable.

**1047. Circumstances in which judgment for possession ceases to be enforceable.**

A judgment for possession of land<sup>1</sup> ceases to be enforceable at the end of the period of two years beginning with the date of the judgment in the following circumstances<sup>2</sup>:

- 341 (1) if the proceedings in which the judgment is given were commenced against a person who was at that time entitled to make an application to be registered as proprietor<sup>3</sup> under the provisions relating to adverse possessors<sup>4</sup>; or
- 342 (2) if, at the end of that period, the person against whom the judgment was given is entitled to make an application to be registered as the proprietor of an estate in the land<sup>5</sup> on the grounds that he had been in adverse possession of the land for a period of two years from the date when a previous application made by him had been rejected<sup>6</sup>.

Where in any proceedings a court determines that a judgment for possession has ceased to be enforceable against a person by virtue of head (2) above, the court must order the Chief Land Registrar<sup>7</sup> to register him as the proprietor of the estate in relation to which he is entitled to make such an application as is mentioned in that head<sup>8</sup>.

- 1 As to the meaning of 'land' see PARA 826 note 4 ante.
- 2 See the Land Registration Act 2002 s 98(2), (4); and heads (1)-(2) in the text.
- 3 Ie an application under ibid s 97, Sch 6 para 1: see PARA 1025 ante.
- 4 Ibid s 98(2).
- 5 Ie an application under ibid Sch 6 para 6: see PARA 1030 ante.
- 6 Ibid s 98(4).
- 7 As to the Chief Land Registrar see PARA 1066 post.
- 8 Land Registration Act 2002 s 98(5)(b).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/5. ADVERSE POSSESSION/(4) DEFENCES IN PROCEEDINGS FOR POSSESSION OF LAND/1048. Prohibition of recovery of rent after adverse possession of rentcharge.

# **1048. Prohibition of recovery of rent after adverse possession of rentcharge.**

Rules<sup>1</sup> may make provision to prohibit the recovery of rent due under a rentcharge from a person who has been in adverse possession<sup>2</sup> of the rentcharge<sup>3</sup>.

When:

- 343 (1) a person has been registered<sup>4</sup> as proprietor of a rentcharge; or
- 344 (2) the registered title<sup>5</sup> to a rentcharge has been closed; or
- 345 (3) a registered rentcharge has been cancelled where the registered title also comprises other rentcharges,

following an application made under the provisions relating to adverse possessors<sup>6</sup> and, if appropriate, closure or cancellation under the relevant rule<sup>7</sup>, no previous registered proprietor of the rentcharge may recover any rent due under the rentcharge from a person who has been in adverse possession of the rentcharge<sup>8</sup>. This applies whether the adverse possession arose either as a result of non-payment of the rent or by receipt of the rent from the person liable to pay it<sup>9</sup>.

1 As to land registration rules generally see PARA 1125 post.

2 For the meaning of 'adverse possession' see PARA 1037 ante.

3 Land Registration Act 2002 s 98(7).

4 For the meaning of 'registered' see PARA 826 note 2 ante.

5 As to the meaning of 'registered title' see PARA 834 ante.

6 Ie an application made under the Land Registration Rules 2003, SI 2003/1417, r 191 (which applies the Land Registration Act 2002 s 97, Sch 6 to the registration of an adverse possessor of a registered rentcharge subject to certain modifications and exceptions: see PARA 1035 ante): see the Land Registration Rules 2003, SI 2003/1417, rr 187, 193(1).

7 Ie under ibid r 192: see PARA 1035 ante.

8 Ibid r 193(1).

9 Ibid r 193(2).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/6. ELECTRONIC CONVEYANCING/(1) INTRODUCTION/1049. General considerations.

## **6. ELECTRONIC CONVEYANCING**

### **(1) INTRODUCTION**

#### **1049. General considerations.**

One of the main purposes of the Land Registration Act 2002 was to create the necessary legal framework to allow registered land conveyancing to be conducted electronically<sup>1</sup>. Underlying the new legislation is the idea that, under the new system of electronic dealing which it seeks to create, the register<sup>2</sup> should be a complete and accurate reflection of the state of the title of the land at any given moment, so that it is thus possible to investigate title to land online with a minimum of additional enquiries and inspections. Any investigation should eventually be able to be effected entirely online. A further aim is the creation of a system of electronic conveyancing (or 'e-conveyancing') whereby dispositions are simultaneously effected and registered electronically using a secure intranet. It is intended to make it impossible to create or transfer many rights in or over registered land except by registering them.

However, e-conveyancing is to be introduced in stages, starting with a small range of transactions that can be effected electronically<sup>3</sup>. These include e-lodgement<sup>4</sup>, e-discharges<sup>5</sup> and e-charges<sup>6</sup>. The Land Registration Act 2002 gives the Lord Chancellor the power to make e-conveyancing compulsory<sup>7</sup>. A transitional period is contemplated in the legislation during which paper-based conveyancing will co-exist alongside e-conveyancing<sup>8</sup>. In the new system the Land Registry will control access to the e-conveyancing network, so that conveyancers will need the registry's continued support in the form of a network access agreement<sup>9</sup> to be able to effect e-conveyances<sup>10</sup>. There will still be scope for individuals to carry out their own conveyancing using computer facilities at the offices of the registry. One important aspect of e-conveyancing is that it will abolish the so called 'registration gap', that is the time between the completion of the transaction by deed and the registration of the transaction at the Land Registry, as completion will include a simultaneous registration by the electronic update of the register<sup>11</sup>. There is also an intention that the Land Registry will provide a means of managing a chain of transactions by monitoring them electronically, with a view to the expedition of conveyancing<sup>12</sup>.

1 See PARA 804 et seq ante.

2 As to the register of title see PARA 811 et seq ante.

3 Under the Land Registration Act 2002 s 94, the Chief Land Registrar may take appropriate steps towards securing the provision of a system of electronic settlement in relation to registration transactions: see PARA 1050 note 5 post. As to the Chief Land Registrar see PARA 1066 post.

4 E-lodgement covers the following applications: severance of a joint tenancy by notice; change of a property description; change of the proprietor's address; change of the proprietor's name by deed poll or marriage; and death of a joint proprietor. E-lodgement has been available since early 2002 to practitioners using the Land Registry Direct system: see Land Registry Practice Guide 23, *Electronic lodgement of applications to change the register*, which is available at the date at which this volume states the law at [www.landreg.gov.uk](http://www.landreg.gov.uk).

5 E-discharges cover the electronic release of registered charges: see Land Registry Practice Guide 31, *Discharges of charges*, which is available at the date at which this volume states the law at [www.landreg.gov.uk](http://www.landreg.gov.uk).

6 E-charges are electronically created mortgages.

7 See the Land Registration Act 2002 s 93(1). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

8 It is unlikely that the full system will be released before 2006. Presumably the transfer inducing first registration (see PARA 826 et seq ante) will be possible in electronic format. While the transaction may be conducted on a paper-based system the transfer deed may be prepared electronically so that it can be adopted for the purposes of the first registration application to the Land Registry (see PARA 832 ante); where first registration is voluntary (see PARA 826 ante) it may be possible to make the application for voluntary first registration electronically. In both these cases however the supporting title deeds will have to be physically delivered to the registry so that the newly registered title can be approved and first registered.

9 As to access network agreements see PARA 1054 post.



10 See the Land Registration Act 2002 s 92, Sch 5; and PARA 1053 et seq post. There is a right of appeal to the adjudicator: see PARA 1146 et seq post.

11 See *ibid* s 93; and PARAS 911 ante, 1052 post.

12 See PARA 1062 post. See also *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/6. ELECTRONIC CONVEYANCING/(1) INTRODUCTION/1050. Statutory framework.

### **1050. Statutory framework.**

Part 8 of the Land Registration Act 2002<sup>1</sup> deals with electronic conveyancing. There are provisions covering the formalities of electronic dispositions<sup>2</sup>, the Land Registry network<sup>3</sup>, the powers to require simultaneous registration<sup>4</sup>, electronic settlement<sup>5</sup> and rule-making provisions<sup>6</sup>.

1 See the Land Registration Act 2002 Pt 8 (ss 91-95).

2 See *ibid* s 91; and PARA 1051 post.

3 See *ibid* s 92, Sch 5; and PARA 1053 et seq post.

4 See *ibid* s 93; and PARAS 911 ante, 1052 post.

5 The Chief Land Registrar may take such steps as he thinks fit for the purpose of securing the provision of a system of electronic settlement in relation to transactions involving registration: *ibid* s 94. As to the Chief Land Registrar see PARA 1066 post.

6 Rules may: (1) make provision about the communication of documents in electronic form to the registrar (*ibid* s 95(a)); (2) make provision about the electronic storage of documents communicated to the registrar in electronic form (s 95(b)). As to electronic communication see the Land Registration Rules 2003, SI 2003/1417; r 14, Sch 2; and PARAS 1077, 1094 post. At the date at which this volume states the law, no rules had been made under the Land Registration Act 2002 s 95(b). See also PARA 1049 note 8 ante.

## **UPDATE**

### **1050 Statutory framework**

NOTE 6--See the Land Registration (Electronic Conveyancing) Rules 2008, SI 2008/1750.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/6. ELECTRONIC CONVEYANCING/(1) INTRODUCTION/1051. Electronic dispositions.

### **1051. Electronic dispositions.**

The statutory provisions on formalities<sup>1</sup> for electronic dispositions apply to certain types of dispositions and where certain conditions are met<sup>2</sup>. The approach is uniform applying equally to deeds under seal or to agreements made under hand.

The provisions apply to:

346 (1) a disposition of a registered estate or charge<sup>3</sup>;

- 347 (2) a disposition of an interest which is the subject of a notice in the register<sup>4</sup>; or
- 348 (3) a disposition which triggers the requirement of registration<sup>5</sup>,

if it is of a kind specified by rules<sup>6</sup>.

The conditions referred to above are that:

- 349 (a) the document makes provision for the time and date when it takes effect<sup>7</sup>;
- 350 (b) the document has the electronic signature of each person by whom it purports to be authenticated<sup>8</sup>;
- 351 (c) each electronic signature is certified<sup>9</sup>; and
- 352 (d) such other conditions as rules may provide are met<sup>10</sup>.

Such a document<sup>11</sup> is to be regarded as being in writing and signed by each individual, and sealed by each corporation, whose electronic signature it has<sup>12</sup>. Such a document is to be regarded for the purposes of any enactment as a deed<sup>13</sup>. If such a document is authenticated by a person as agent, it is to be regarded for the purposes of any enactment as authenticated by him under the written authority of his principal<sup>14</sup>. If notice of an assignment made by means of such a document is given in electronic form in accordance with rules, it is to be regarded for the purposes of any enactment as given in writing<sup>15</sup>. The right of a purchaser to have the execution of a conveyance attested which is conferred by the Law of Property Act 1925<sup>16</sup> does not apply to a such document<sup>17</sup>. There is also provision made for the execution of electronic documents by a company<sup>18</sup>.

1   Ie the Land Registration Act 2002 s 91.

2   Ibid s 91(1). As to the types of document see s 91(2); and heads (1)-(3) in the text. As to conditions see s 91(3); and heads (a)-(d) in the text. The conditions in s 91(3) are effectively the preconditions for an electronic document under the legislation.

3   Ibid s 91(2)(a).

4   Ibid s 91(2)(b).

5   Ibid s 91(2)(c).

6   Ibid s 91(2). At the date at which this volume states the law, no such rules had been made. See PARAS 1049 note 8, 1050 note 6 ante.

7   Ibid s 91(3)(a). This first precondition sets aside the paper-based requirement for delivery: instead each document will need to include a time and date for the purposes of registration.

8   Ibid s 91(3)(b). The electronic signature is the electronic equivalent of a manual signature: see the Electronic Communications Act 2000 s 8; and CIVIL PROCEDURE vol 11 (2009) PARA 947. References in the Land Registration Act 2002 s 91 to an electronic signature and to the certification of such a signature are to be read in accordance with the Electronic Communications Act 2000 s 7(2), (3) (see CIVIL PROCEDURE vol 11 (2009) PARA 948); Land Registration Act 2002 s 91(10). See CIVIL PROCEDURE. The Land Registration Act 2002 is not prescriptive in regard to the electronic signature and authentication, leaving it open for rules (see s 91(3)(d)) to be made to prescribe the mechanism the Land Registry will accept for signature authentication as technology develops.

9   Ibid s 91(3)(c). This certification is an additional safeguard. See note 8 supra.

10   Ibid s 91(3)(d). See note 8 supra.

11   Ie a document to which ibid s 91 applies.

12   Ibid s 91(4). The effect of this is to ensure that the existing law relating to conveyancing documentation is deemed to apply to e-documentation: thus if a statute requires a document to be in writing it is deemed to be so by the operation of s 91. See eg the Law of Property (Miscellaneous Provisions) Act 1989 s 2; and DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARAS 145, 156.

13 Land Registration Act 2002 s 91(5). The effect of this is that where statute requires a deed this will be deemed to have been made for conveyancing purposes. See eg the Law of Property Act 1925 s 52(1). See also note 14 infra.

14 Land Registration Act 2002 s 91(6). The effect of this is that it will not be possible to question the existence of authority from a client to give his conveyancing practitioner the entitlement to effect an electronic signature on his behalf: if the practitioner makes the electronic signature on the client's behalf that practitioner will be deemed to have had authority.

15 Ibid s 91(7). The Law of Property Act 1925 s 136(1) requires notice in writing to be given to the other party to an agreement of the form of assignment relating to land, and the Land Registration Act 2002 s 91(7) states that if such a notice is given electronically such a notice is deemed to be given in writing and to be within the Law of Property Act 1925 s 136. There are similar issues in regard to an option to purchase land registered as a notice on the register.

16 In the Law of Property Act 1925 s 75: see SALE OF LAND vol 42 (Reissue) PARA 305.

17 Land Registration Act 2002 s 91(8).

18 If the Companies Act 1985 s 36A(4) (as added) (execution of documents) applies to a document because of the Land Registration Act 2002 s 91(4) (see note 12 supra), the Companies Act 1985 s 36A(6) (as added) (presumption of due execution) (see COMPANIES vol 14 (2009) PARA 288) has effect in relation to the document with the substitution of 'authenticated' for 'signed': Land Registration Act 2002 s 91(9). Section s 91(9) covers electronic documents made by a company and executed without a seal and makes clear that the protection in the Companies Act 1985 s 36A(6) (as added) applies to an electronic document that has been electronically authenticated on behalf of the company.

## UPDATE

### 1051 Electronic dispositions

NOTE 6--See the Land Registration (Electronic Conveyancing) Rules 2008, SI 2008/1750.

NOTE 18--2002 Act s 91(9) substituted to take account of the coming into force of the Companies Act 2006: SI 2008/948.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/6. ELECTRONIC CONVEYANCING/(1) INTRODUCTION/1052. Simultaneous registration.

### 1052. Simultaneous registration.

Once rules have been made so as to make e-conveyancing compulsory, a disposition<sup>1</sup> of a registered estate or charge or an interest which is the subject of a notice in the register<sup>2</sup>, or a contract to make such a disposition, will only have effect if it is made by means of a document in electronic form and if, when the document purports to take effect<sup>3</sup>:

- 353 (1) it is electronically communicated to the Chief Land Registrar<sup>4</sup>; and
- 354 (2) the relevant registration requirements are met<sup>5</sup>.

For these purposes the relevant registration requirements are: (a) in the case of a registrable disposition<sup>6</sup>, the registration requirements set out in Schedule 2 to the Land Registration Act 2002<sup>7</sup>; and (b) in the case of any other disposition, or a contract, such requirements as rules may provide<sup>8</sup>.

1 'Disposition', in relation to a registered charge, includes postponement: Land Registration Act 2002 s 93(6). Section 27(1) (see PARA 911 ante) does not apply to a disposition under s 93.

2    le where the disposition is of a description specified by rules: see *ibid* s 93(1). As to notices in the register see *PARA 995 et seq ante*.

3    *Ibid* s 93(1), (2).

4    *Ibid* s 93(2)(a). As to the Chief Land Registrar see *PARA 1066 post*.

5    *Ibid* s 93(2)(b).

6    For the meaning of 'registrable disposition' see *PARA 911 ante*.

7    Land Registration Act 2002 s 93(3)(a). As to registration requirements for registrable dispositions under s 27, Sch 2 see *PARA 911 et seq ante*.

8    *Ibid* s 93(3)(b). Before making rules under s 93 the Lord Chancellor must consult such persons as he considers appropriate: s 93(5). As to subordinate legislation generally see *PARA 1124 post*. As to the Lord Chancellor see *CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq*.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/6. ELECTRONIC CONVEYANCING/(2) LAND REGISTRY NETWORK/1053. In general.

## **(2) LAND REGISTRY NETWORK**

### **1053. In general.**

There is provision in the Land Registration Act 2002 for the Land Registry network<sup>1</sup> that will be required for electronic conveyancing to be a reality. In essence the network will exist as the public face of land registration. It will allow the public to view the register, and to apply to update the register and to create new titles and interests electronically.

According to the Act, the Chief Land Registrar<sup>2</sup> may provide, or arrange for the provision of, an electronic communications network for use for such purposes as he thinks fit relating to registration or the carrying on of transactions which involve registration, and are capable of being effected electronically<sup>3</sup>.

The registrar may provide, or arrange for the provision of, education and training in relation to the use of a Land Registry network<sup>4</sup>.

1    'Land Registry network' means a network provided under the Land Registration Act 2002 s 92(1): s 92, Sch 5 para 12. A network in computer terms is a system of computers that are interconnected by various means in order to share information between users. As to the Land Registry see *PARA 1064 et seq post*.

2    As to the Chief Land Registrar see *PARA 1066 post*.

3    Land Registration Act 2002 s 92(1). Schedule 5 makes provision in connection with a network provided under s 92(1) and transactions carried on by means of such a network: s 92(2). Schedule 5 contains provisions covering the administration of the proposed network; it covers such matters as access to the network (see *PARA 1054 post*), terms of access (see *PARA 1055 post*), termination of access (see *PARA 1056 post*), appeals against decisions by the registrar (see *PARA 1057 post*), network transaction rules (see *PARA 1058 post*), the overriding nature of network access obligations (see *PARA 1059 post*), do-it-yourself conveyancing (see *PARA 1060 post*), presumption of authority (see *PARA 1061 post*), management of network transactions (see *PARA 1062 post*) and miscellaneous and supplementary matters (see the text and note 4 *infra*; and *PARA 1063 post*).

4    See *idid* Sch 5 para 10.

## **UPDATE**

### **1053 In general**

NOTE 3--The Land Registration (Network Access) Rules 2008, SI 2008/1748, have been made under the Land Registration Act 2002 s 92(2). See also the Network Access Appeal Rules 2008, SI 2008/1730; and PARA 1151.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/6. ELECTRONIC CONVEYANCING/(2) LAND REGISTRY NETWORK/1054. Access to the network.

#### **1054. Access to the network.**

Conveyancers intending to participate in electronic conveyancing will need to be given appropriately regulated access to the Land Registry network<sup>1</sup>. A person who is not a member of the Land Registry may only have such access under authority conferred by means of an agreement with the Chief Land Registrar<sup>2</sup>. Such an agreement ('network access agreement')<sup>3</sup> may authorise access for:

- 355 (1) the communication, posting or retrieval of information<sup>4</sup>;
- 356 (2) the making of changes to the register of title or cautions register<sup>5</sup>;
- 357 (3) the issue of official search certificates<sup>6</sup>;
- 358 (4) the issue of official copies<sup>7</sup>; or
- 359 (5) such other conveyancing purposes as the registrar thinks fit<sup>8</sup>.

The registrar must, on application, enter into a network access agreement with the applicant if the applicant meets such criteria as rules may provide<sup>9</sup>.

1 For the meaning of 'Land Registry network' see PARA 1053 note 1 ante. As to the Land Registry see PARA 1064 et seq post.

2 Land Registration Act 2002 s 92, Sch 5 para 1. As to the Chief Land Registrar see PARA 1066 post.

3 'Network access agreement' means a network provided under ibid s 92(1) (see PARA 1053 ante): Sch 5 para 12.

4 Ibid Sch 5 para 1(2)(a).

5 Ibid Sch 5 para 1(2)(b).

6 Ibid Sch 5 para 1(2)(c).

7 Ibid Sch 5 para 1(2)(d).

8 Ibid Sch 5 para 1(2)(e).

9 Ibid Sch 5 para 1(4). Rules may regulate the use of network access agreements to confer authority to carry out functions of the registrar: Sch 5 para 1(3). At the date at which this volume states the law, no rules have been made for the purposes of Sch 5 para 1(3), (4). The Lord Chancellor must consult before making such rules and must have regard to certain other matters: see Sch 5 para 11; and PARA 1063 post. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

There is provision made for appeals against such refusal of access: see Sch 5 para 4; and PARA 1057 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/6. ELECTRONIC CONVEYANCING/(2) LAND REGISTRY NETWORK/1055. Terms of access.

### 1055. Terms of access.

The terms on which access to a Land Registry network<sup>1</sup> is authorised must be such as the Chief Land Registrar<sup>2</sup> thinks fit<sup>3</sup>, and may, in particular, include charges for access<sup>4</sup>.

This power<sup>5</sup> may be used, not only for the purpose of regulating the use of the network, but also for:

- 360 (1) securing that the person granted access uses the network to carry on such qualifying transactions<sup>6</sup> as may be specified in, or under, the agreement<sup>7</sup>;
- 361 (2) such other purpose relating to the carrying on of qualifying transactions as rules may provide<sup>8</sup>; or
- 362 (3) enabling network transactions<sup>9</sup> to be monitored<sup>10</sup>.

It must be a condition of a network access agreement<sup>11</sup> that the person granted access comply with any network transaction rules for the time being in force<sup>12</sup>.

1 For the meaning of 'Land Registry network' see PARA 1053 note 1 ante. As to the Land Registry see PARA 1064 et seq post.

2 As to the Chief Land Registrar see PARA 1066 post.

3 This is subject to the Land Registration Act 2002 s 92, Sch 5 para 2(3) (see the text and note 12 infra) and Sch 5 para 2(4) (see note 8 infra).

4 Ibid Sch 5 para 2(1).

5 I.e. under ibid Sch 5 para 2(1). As to rules under ibid Sch 5 para 2 see PARA 1054 note 9 ante.

6 'Qualifying transaction' means a transaction which involves registration, and is capable of being effected electronically: ibid Sch 5 para 12.

7 Ibid Sch 5 para 2(2)(a).

8 Ibid Sch 5 para 2(2)(b). Rules may regulate the terms on which access to a Land Registry network is authorised: Sch 5 para 2(4).

9 'Network transaction' means a transaction carried on by means of a Land Registry network: ibid Sch 5 para 12.

10 Ibid Sch 5 para 2(2)(c).

11 For the meaning of 'network access agreement' see PARA 1054 note 3 ante.

12 Land Registration Act 2002 Sch 5 para 2(3). The reference to network transaction rules for the time being in force is to such rules made under Sch 5 para 5 (see PARA 1058 post).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/6. ELECTRONIC CONVEYANCING/(2) LAND REGISTRY NETWORK/1056. Termination of access.

### 1056. Termination of access.

The person granted access<sup>1</sup> by a network access agreement<sup>2</sup> may terminate the agreement at any time by notice to the Chief Land Registrar<sup>3</sup>.

Rules<sup>4</sup> may make provision about the termination of a network access agreement by the registrar and may, in particular, make provision about: (1) the grounds of termination<sup>5</sup>; (2) the

procedure to be followed in relation to termination<sup>6</sup>; and (3) the suspension of termination pending appeal<sup>7</sup>.

Without prejudice to the generality of head (1) above, rules under that head may authorise the registrar to terminate a network access agreement if the person granted access:

- 363 (a) fails to comply with the terms of the agreement<sup>8</sup>;
- 364 (b) ceases to be a person with whom the registrar would be required to enter into a network access agreement conferring the authority which the agreement confers<sup>9</sup>; or
- 365 (c) does not meet such conditions as the rules may provide<sup>10</sup>.

1 As to access to the network see PARA 1054 ante.

2 For the meaning of 'network access agreement' see PARA 1054 note 3 ante.

3 Land Registration Act 2002 s 92, Sch 5 para 3(1). As to the Chief Land Registrar see PARA 1066 post.

4 As to rules under ibid Sch 5 para 3 see PARA 1054 note 9 ante. The Lord Chancellor must consult before making such rules and must have regard to certain other matters: see Sch 5 para 11; and PARA 1063 post. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

5 Ibid Sch 5 para 3(2)(a).

6 Ibid Sch 5 para 3(2)(b).

7 Ibid Sch 5 para 3(2)(c). As to appeals see Sch 5 para 4; and PARA 1057 post.

8 Ibid Sch 5 para 3(3)(a).

9 Ibid Sch 5 para 3(3)(b).

10 Ibid Sch 5 para 3(3)(c).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/6. ELECTRONIC CONVEYANCING/(2) LAND REGISTRY NETWORK/1057. Appeals against decisions by Chief Land Registrar.

### **1057. Appeals against decisions by Chief Land Registrar.**

A person who is aggrieved by a decision of the Chief Land Registrar<sup>1</sup> with respect to entry into, or termination of, a network access agreement<sup>2</sup> may appeal against the decision to the adjudicator<sup>3</sup>.

On determining an appeal<sup>4</sup>, the adjudicator may give such directions as he considers appropriate to give effect to his determination<sup>5</sup>.

Rules may make provision about appeals<sup>6</sup>.

1 As to the Chief Land Registrar see PARA 1066 post.

2 For the meaning of 'network access agreement' see PARA 1054 note 3 ante. As to access to the network see PARAS 1054-1055 ante. As to termination of such access see PARA 1056 ante.

3 Land Registration Act 2002 s 92, Sch 5 para 4(1). As to the adjudicator's powers and functions see Pt 11 (ss 107-114); and PARA 1146 et seq post. In the case of a decision of the adjudicator on an appeal under Sch 5 para 4, appeal to the High Court is only possible on a point of law: see s 111(2); and PARA 1203 post.

- 4 le an appeal under ibid Sch 5 para 4.
- 5 Ibid Sch 5 para 4(2).
- 6 Ibid Sch 5 para 4(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/6. ELECTRONIC CONVEYANCING/(2) LAND REGISTRY NETWORK/1058. Network transaction rules.

### **1058. Network transaction rules.**

Rules may make provision about how to go about network transactions<sup>1</sup>. These network transaction rules<sup>2</sup> may, in particular, make provision about dealings with the Land Registry<sup>3</sup>, including the procedure to be followed<sup>4</sup>, and the supply of information (including information about unregistered interests)<sup>5</sup>.

- 1 Land Registration Act 2002 s 92, Sch 5 para 5(1). For the meaning of 'network transaction' see PARA 1055 note 9 ante. At the date at which this volume states the law, no such rules had been made. See PARAS 1049 note 8, 1050 note 6 ante.
- 2 le rules under ibid Sch 5 para 5(1).
- 3 As to the Land Registry see PARA 1064 et seq post.
- 4 Land Registration Act 2002 Sch 5 para 5(2)(a).
- 5 Ibid Sch 5 para 5(2)(b). The rules will thus cover not just registered titles but also unregistered titles that are to be submitted for first registration. As to first registration see PARA 826 et seq ante.

### **UPDATE**

### **1058 Network transaction rules**

TEXT AND NOTES--See the Land Registration (Electronic Conveyancing) Rules 2008, SI 2008/1750.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/6. ELECTRONIC CONVEYANCING/(2) LAND REGISTRY NETWORK/1059. Overriding nature of network access obligations.

### **1059. Overriding nature of network access obligations.**

To the extent that an obligation not owed under a network access agreement<sup>1</sup> conflicts with an obligation owed under such an agreement by the person granted access<sup>2</sup>, the obligation not owed under the agreement is discharged<sup>3</sup>.

- 1 For the meaning of 'network access agreement' see PARA 1054 note 3 ante.
- 2 As to access to the network see PARAS 1054-1055 ante. As to termination of such access see PARA 1056 ante.
- 3 Land Registration Act 2002 s 92, Sch 5 para 6. This provision seeks to resolve any conflicts of interest that may arise, eg rules may require the relevant conveyancer to provide specified information about a dealing



(including information about interests the priority of which is protected without the need for registration) that the registered proprietor might not wish disclosed.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/6. ELECTRONIC CONVEYANCING/(2) LAND REGISTRY NETWORK/1060. Do-it-yourself conveyancing.

### **1060. Do-it-yourself conveyancing.**

If there is a Land Registry network<sup>1</sup>, the Chief Land Registrar<sup>2</sup> has a duty to provide such assistance as he thinks appropriate for the purpose of enabling persons engaged in qualifying transactions<sup>3</sup> who wish to do their own conveyancing to do so by means of the network<sup>4</sup>. This duty<sup>5</sup> does not extend to the provision of legal advice<sup>6</sup>.

1 For the meaning of 'Land Registry network' see PARA 1053 note 1 ante.

2 As to the Chief Land Registrar see PARA 1066 post.

3 For the meaning of 'qualifying transaction' see PARA 1055 note 6 ante.

4 Land Registration Act 2002 s 92, Sch 5 para 7(1). The duty in Sch 5 para 7 thus extends to affording 'do-it-yourself' conveyancers access to the network to enable them to conduct a qualifying transaction without professional assistance, but presumably with the assistance of the registrar.

5 I.e. the duty under ibid Sch 5 para 7(1).

6 Ibid Sch 5 para 7(2). See note 4 supra.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/6. ELECTRONIC CONVEYANCING/(2) LAND REGISTRY NETWORK/1061. Presumption of authority.

### **1061. Presumption of authority.**

In the context of paper-based conveyancing a conveyancer does not have an implied authority to sign an agreement on behalf of his or her client; explicit authority is required, and the prudent conveyancer will obtain that authority in writing. The Land Registration Act 2002 avoids the need for the exchange of paper-based authorities before contracts can be concluded electronically<sup>1</sup>. Accordingly, where a person who is authorised under a network access agreement<sup>2</sup> to do so uses the network for the making of a disposition or contract, he is deemed to be acting in favour of any other party if two conditions are fulfilled<sup>3</sup>:

366 (1) the document purporting to effect the disposition or to be the contract purports to be authenticated by him as agent<sup>4</sup>; and

367 (2) such document contains a statement to the effect that he is acting under the authority of his principal<sup>5</sup>.

1 See the Land Registration Act 2002 s 92, Sch 5.

2 For the meaning of 'network access agreement' see PARA 1054 note 3 ante.

3 Land Registration Act 2002 Sch 5 para 8. Presumably network transaction rules under Sch 5 para 5 (see PARA 1058 ante) will require a network user to obtain all necessary authorities in order to comply with these conditions.

4 Ibid Sch 5 para 8(b)(i).

5 Ibid Sch 5 para 8(b)(ii).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/6. ELECTRONIC CONVEYANCING/(2) LAND REGISTRY NETWORK/1062. Management of network transactions.

### **1062. Management of network transactions.**

Network access agreements<sup>1</sup> will require users to supply information about transactions which they are dealing with, mostly in connection with the management of chains. In this context, the Chief Land Registrar<sup>2</sup> may use monitoring information<sup>3</sup> for the purpose of managing network transactions<sup>4</sup> and may, in particular, disclose such information to persons authorised to use the network, and authorise the further disclosure of such information, if he considers it is necessary or desirable to do so<sup>5</sup>.

The registrar may delegate these functions<sup>6</sup>, subject to such conditions as he thinks fit<sup>7</sup>.

1 For the meaning of 'network access agreement' see PARA 1054 note 3 ante.

2 As to the Chief Land Registrar see PARA 1066 post.

3 For these purposes, 'monitoring information' means information provided in pursuance of provision in a network access agreement included under Sch 5 para 2(2)(c) (see PARA 1055 head (3) ante): Land Registration Act 2002 s 92, Sch 5 para 9(3).

4 For the meaning of 'network transaction' see PARA 1055 note 9 ante.

5 Land Registration Act 2002 Sch 5 para 9(1).

6 Ie his functions under ibid Sch 5 para 9(1).

7 Ibid Sch 5 para 9(2).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/6. ELECTRONIC CONVEYANCING/(2) LAND REGISTRY NETWORK/1063. Power to make rules.

### **1063. Power to make rules.**

Power to make rules on access to the network<sup>1</sup>, terms of access and termination of access<sup>2</sup> is exercisable by the Lord Chancellor<sup>3</sup> who, before making such rules, must consult such persons as he considers appropriate<sup>4</sup>. In particular, in making rules on access to the network and the grounds for termination of access<sup>5</sup>, the Lord Chancellor must have regard to the need to secure:

- 368 (1) the confidentiality of private information kept on the network<sup>6</sup>;
- 369 (2) competence in relation to the use of the network (in particular for the purpose of making changes)<sup>7</sup>; and
- 370 (3) the adequate insurance of potential liabilities in connection with use of the network<sup>8</sup>.

1 As to the network see PARA 1053 ante.

2 le under the Land Registration Act 2002 s 92, Sch 5 para 1 (see PARA 1054 ante), Sch 5 para 2 (see PARA 1055 ante) or Sch 5 para 3 (see PARA 1056 ante).

3 Ibid Sch 5 para 11(1). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 Ibid Sch 5 para 11(2).

5 le under ibid Sch 5 para 1 (see PARA 1054 ante) or Sch 5 para 3(2)(a) (see PARA 1056 ante).

6 Ibid Sch 5 para 11(3)(a).

7 Ibid Sch 5 para 11(3)(b).

8 Ibid Sch 5 para 11(3)(c).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(1) THE LAND REGISTRY/(i) The Office and Officers/1064.  
The Land Registry.

## **7. ADMINISTRATION AND OFFENCES**

### **(1) THE LAND REGISTRY**

#### **(i) The Office and Officers**

##### **1064. The Land Registry.**

Provision for establishment of an 'Office of Land Registry'<sup>1</sup> was first made for the purposes of the Land Registry Act 1862<sup>2</sup>, and the Land Registration Act 1925<sup>3</sup> required that there continue to be an office in London called Her Majesty's Land Registry<sup>4</sup> where registration of title and certain other business was to be carried on<sup>5</sup>. Under the Land Registration Act 2002, there continues to be such an office, which is to deal with the business of registration under that Act<sup>6</sup>. The Land Registry consists of the Chief Land Registrar<sup>7</sup>, who is its head, and the staff appointed by him<sup>8</sup>.

1 See the Land Registry Act 1962 s 108 (repealed).

2 See PARA 802 ante.

3 See PARA 803 ante.

4 See the Land Registration Act 1925 s 126(1) (repealed). These provisions were not to be construed as requiring the whole of the business of the Land Registry to be conducted in London: see the Land Registration and Land Charges Act 1971 s 12 (repealed).

5 The business arising from registration of land charges (see LAND CHARGES) and agricultural charges (see AGRICULTURAL PRODUCTION AND MARKETING vol 1 (2008) PARA 1331) were assigned to the Land Registry with that registry being divided into two departments: (1) the Registration of Title Department; and (2) the Land Charges and Agricultural Credits Department.

6 Land Registration Act 2002 s 99(1). The Land Registration Act 2002 makes some adjustments to the way that the Land Registry is managed and administered, in particular in the way disputes are handled with the appointment of an Adjudicator to Her Majesty's Land Registry (see PARA 1146 et seq post).

7 As to the Chief Land Registrar see PARA 1066 post.

8 Land Registration Act 2002 s 99(2). References in the Land Registration Act 2002 to a member of the Land Registry are to be read accordingly: see s 99(2). As to the Land Registry staff see PARA 1067 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(1) THE LAND REGISTRY/(i) The Office and Officers/1065.  
Days open for business.

### **1065. Days open for business.**

The Land Registry is open to the public daily except on Saturdays, Sundays, Christmas Day, Good Friday or any other day either specified or declared by proclamation<sup>1</sup> or appointed by the Lord Chancellor<sup>2</sup>.

1 le by proclamation under the Banking and Financial Dealings Act 1971 s 1: see TIME vol 97 (2010) PARA 321.

2 Land Registration Rules 2003, SI 2003/1417, r 216(1). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

However, if the Chief Land Registrar is satisfied that adequate arrangements have been made or will be in place for opening the Land Registry to the public on Saturdays, he may, in such manner as he considers appropriate, give notice to that effect: r 216(2). On or after the date specified in any such notice, r 216(1) has effect as though the word 'Saturdays' had been omitted: r 216(3). The date referred to in r 216(3) must be at least eight weeks after the date of the notice: r 216(4). On and after the date specified in any notice given pursuant to r 216(2), the periods mentioned in various rules are extended: see r 216(5). As to the Chief Land Registrar see PARA 1066 post.

Thus in r 16(1) (see PARA 1079 ante) the prescribed period is extended from 20 business days to 24 business days; in r 31(2) (see PARA 847 ante) the twentieth business day is extended to the twentyfourth business day; in r 53(1) (see PARAS 856, 858 ante) the fifteenth business day is extended to the eighteenth business day; in r 53(3) (see PARAS 856, 858 ante) the thirtieth business day is extended to the thirtysixth business day; in r 53(4) (see PARAS 856, 858 ante) the fifteenth business day is extended to the eighteenth business day; in r 54(9) (see PARA 930 ante) the fourth business day remains the fourth business day; in r 55(4) (see PARA 931 ante) 15 business days is extended to 18 business days; in r 86(3) (see PARA 1004 ante) the fifteenth business day is extended to the eighteenth business day; in r 86(3) (see PARA 1004 ante) the thirtieth business day is extended to the thirtysixth business day; in r 86(5) (see PARA 1004 ante) the thirtieth business day is extended to the thirtysixth business day; in r 86(6) (see PARAS 1004 ante) the fifteenth business day is extended to the eighteenth business day; in r 92(9) (see PARA 1013 ante) the fifteenth business day is extended to the eighteenth business day; in r 119(3) (see PARA 873 ante) the twentieth business day is extended to the twentyfourth business day; in r 189 (see PARA 1029 ante) the sixtyfifth business day is extended to the seventy eighth business day; in r 197(2) (see PARA 1130 post) the fifteenth business day is extended to the eighteenth business day; in r 201(5) (see PARA 1144 ante) the twentieth business day is extended to the twentyfourth business day; in r 202(3) (see PARA 1145 ante) the twentieth business day is extended to the twentyfourth business day; in r 202(8) (see PARA 1145 ante) the twentieth business day is extended to the twentyfourth business day; and in r 218 (see PARA 993 ante) the fifteenth business day is extended to the eighteenth business day.

### **UPDATE**

### **1065 Days open for business**

TEXT AND NOTES--SI 2003/1417 r 216 amended: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(1) THE LAND REGISTRY/(i) The Office and Officers/1066.  
The Chief Land Registrar.

### **1066. The Chief Land Registrar.**

The Chief Land Registrar is appointed by the Lord Chancellor<sup>1</sup>. He may at any time resign his office by written notice to the Lord Chancellor<sup>2</sup>. The Lord Chancellor may remove the registrar from office if he is unable or unfit to discharge the functions of office<sup>3</sup>. Subject to the above, a person appointed to be the registrar is to hold and vacate office in accordance with the terms of his appointment and, on ceasing to hold office, is eligible for reappointment<sup>4</sup>.

The Lord Chancellor is to pay the registrar such remuneration, and such travelling and other allowances, as the Lord Chancellor may determine<sup>5</sup>.

The Lord Chancellor must also: (1) pay such pension, allowances or gratuities as he may determine to or in respect of a person who is or has been the registrar<sup>6</sup>; or (2) make such payments as he may determine towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person<sup>7</sup>.

If, when a person ceases to be the registrar, the Lord Chancellor determines that there are special circumstances which make it right that the person should receive compensation, the Lord Chancellor may pay to the person by way of compensation a sum of such amount as he may determine<sup>8</sup>.

The office of Chief Land Registrar is a disqualifying office for the purposes of membership of the House of Commons<sup>9</sup>.

1 Land Registration Act 2002 s 99(3). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 Ibid s 99, Sch 7 para 1(1).

3 Ibid Sch 7 para 1(2).

4 Ibid Sch 7 para 1(3).

5 Ibid Sch 7 para 2(1).

6 Ibid Sch 7 para 2(2)(a).

7 Ibid Sch 7 para 2(2)(b).

8 Ibid Sch 7 para 2(3).

9 See ibid Sch 7 para 7. Appropriate amendments are made to the House of Commons Disqualification Act 1975: see ss 1, 4, 5, Sch 1 Pt III (as amended); and PARLIAMENT vol 78 (2010) PARA 908.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(1) THE LAND REGISTRY/(i) The Office and Officers/1067. Land Registry officers.

### **1067. Land Registry officers.**

The Chief Land Registrar<sup>1</sup> may appoint such staff as he thinks fit<sup>2</sup>. The terms and conditions of such appointments are such as the registrar, with the approval of the Minister for the Civil Service<sup>3</sup>, thinks fit<sup>4</sup>.

No member of the Land Registry is to be liable in damages for anything done or omitted in the discharge or purported discharge of any function relating to land registration, unless it is shown that the act or omission was in bad faith<sup>5</sup>.

- 1 As to the Chief Land Registrar see PARA 1066 ante.
- 2 Land Registration Act 2002 s 99, Sch 7 para 3(1).
- 3 As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 355, 395, 427.
- 4 Land Registration Act 2002 Sch 7 para 3(2).
- 5 Ibid Sch 7 para 4.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(1) THE LAND REGISTRY/(i) The Office and Officers/1068.  
Sealing of documents etc.

### **1068. Sealing of documents etc.**

The Land Registry is to continue to have a seal and any document purporting to be sealed with it is to be admissible in evidence without any further or other proof<sup>1</sup>.

- 1 Land Registration Act 2002 s 99, Sch 7 para 5. For the purposes of the certification of documents by certain departments, the Documentary Evidence Act 1868 has effect as if: (1) the registrar (ie the Chief Land Registrar: see PARA 1066 ante) were included in the first column of the Schedule to that Act; (2) the registrar and any person authorised to act on his behalf were mentioned in the second column of that Schedule; and (3) the regulations referred to in that Act included any form or direction issued by the registrar or by any such person: Land Registration Act 2002 Sch 7 para 6. See also CIVIL PROCEDURE vol 11 (2009) PARA 892 et seq. As to Land Registry officers see PARA 1067 ante.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(1) THE LAND REGISTRY/(ii) Conduct of Business/1069.  
Conduct of business.

### **(ii) Conduct of Business**

#### **1069. Conduct of business.**

The conduct of the business of the Land Registry is governed by the Land Registration Act 2002<sup>1</sup> and regulations made under it<sup>2</sup>.

Any function of the Chief Land Registrar<sup>3</sup> may be carried out by any member of the Land Registry who is authorised for the purpose by the registrar<sup>4</sup>.

The Lord Chancellor<sup>5</sup> may by regulations make provision about the carrying out of functions during any vacancy in the office of registrar<sup>6</sup>.

The Lord Chancellor may by order designate a particular office of the Land Registry as the proper office for the receipt of applications or a specified description of application<sup>7</sup>. The registrar may prepare and publish such forms and directions as he considers necessary or desirable for facilitating the conduct of the business of registration under the Land Registration Act 2002<sup>8</sup>.

1 ie the Land Registration Act 2002 s 100.

2 le under ibid s 100.

3 As to the Chief Land Registrar see PARA 1066 ante.

4 Land Registration Act 2002 s 100(1).

5 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

6 Land Registration Act s 100(2). As to the regulations made see the Land Registration (Acting Chief Land Registrar) Regulations 2003, SI 2003/2281. The Lord Chancellor may appoint a person to carry out the functions of the registrar during any vacancy in that office: reg 2(1). Such person must, at the time of appointment, be a member of the Land Registry and also a member of the Senior Civil Service: reg 2(2). Such person must carry out the functions of the registrar during any vacancy but such appointment ceases if the person appointed: (1) ceases to be a member of the Land Registry; or (2) resigns his appointment under reg 2(1) by giving notice in writing to the Lord Chancellor; or (3) has his appointment revoked by the Lord Chancellor on the grounds of being unable or unfit to discharge the functions of the registrar: reg 2(3), (4). For the purpose of reg 2(2), a person is to be treated as a member of the Senior Civil Service if, at the time of his appointment, he holds a Civil Service grade which is, or is equivalent to, a grade at any time covered by the Senior Civil Service: reg 2(5).

7 Land Registration Act 2002 s 100(3). As to the order that has been made see the Land Registration (Proper Office) Order 2003, SI 2003/2040. The Order applies to any application to the registrar except an application delivered to the registrar: (1) in accordance with a written arrangement as to delivery made between the registrar and the applicant or between the registrar and the applicant's conveyancer (art 2(1)(a)); or (2) under the provisions of any relevant notice given under the Land Registration Rules 2003, SI 2003/1417, Sch 2 (see PARAS 1077, 1094 post) (Land Registration (Proper Office) Order 2003, SI 2003/2040, art 2(1)(b)). For the above purposes, 'conveyancer' means: a solicitor; or a licensed conveyancer within the meaning of the Administration of Justice Act 1985 s 11(2) (see LEGAL PROFESSIONS vol 66 (2009) PARA 1319); or a fellow of the Institute of Legal Executives: Land Registration (Proper Office) Order 2003, SI 2003/2040, art 2(2).

As to the proper office for the receipt of an application to which the Land Registration (Proper Office) Order 2003, SI 2003/2040, see art 2(3), Schedule.

8 Land Registration Act 2002 s 100(4).

## UPDATE

### 1069 Conduct of business

NOTE 7--SI 2003/2040 replaced: see now the Land Registration (Proper Office) (No 2) Order 2009, SI 2009/2727.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(1) THE LAND REGISTRY/(ii) Conduct of Business/1070. Annual report.

### 1070. Annual report.

The Chief Land Registrar<sup>1</sup> must make an annual report on the business of the Land Registry to the Lord Chancellor<sup>2</sup>. The registrar must publish every such report and may do so in such manner as he thinks fit<sup>3</sup>.

The Lord Chancellor must lay copies of every such report before Parliament<sup>4</sup>.

1 As to the Chief Land Registrar see PARA 1066 ante.

2 Land Registration Act 2002 s 101(1). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 Ibid s 101(2).

4 Ibid s 101(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(1) THE LAND REGISTRY/(ii) Conduct of Business/1071. Fees and indemnities.

### **1071. Fees and indemnities.**

The Lord Chancellor<sup>1</sup> may with the advice and assistance of the Rule Committee<sup>2</sup>, and the consent of the Treasury<sup>3</sup>, by order:

- 371 (1) prescribe fees to be paid in respect of dealings with the Land Registry<sup>4</sup>;
- 372 (2) make provision about the payment of prescribed fees<sup>5</sup>.

In certain circumstances in which a person suffers loss as a result of an error in the register<sup>6</sup> that person may be entitled to be indemnified for that loss by the Chief Land Registrar<sup>7</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 ie the body referred to in the Land Registration Act 2002 s 127(2) (see PARA 1125 post).

3 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 512 et seq.

4 Land Registration Act 2002 s 102(a). The power to prescribe fees does not extend to fees under s 69(3)(b) regarding the access to historical information related to a registered title (see PARA 1108 post) or under s 105 relating to possible consultancy and advisory services that the Land Registry may provide (see PARA 1073 post). As to the fees prescribed see the Land Registration Fee Order 2004, SI 2004/595 (amended by SI 2004/1833).

5 Land Registration Act 2002 s 102(b).

6 As to the register see PARA 811 et seq ante.

7 See the Land Registration Act 2002 s 103, Sch 8; and PARA 983 et seq ante.

### **UPDATE**

### **1071 Fees and indemnities**

NOTE 4--SI 2004/595 (as amended) revoked: see now the Land Registration Fee Order 2009, SI 2009/845.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(1) THE LAND REGISTRY/(iii) Land Information, Consultancy and Powers in regard to Companies/1072. General information about land.

### **(iii) Land Information, Consultancy and Powers in regard to Companies**

### **1072. General information about land.**



The Chief Land Registrar<sup>1</sup> may publish information about land in England and Wales<sup>2</sup> if it appears to him to be information in which there is legitimate public interest<sup>3</sup>.

1 As to the Chief Land Registrar see PARA 1066 ante.

2 For the meanings of 'England' and 'Wales' see PARA 803 note 2 ante.

3 Land Registration Act 2002 s 104. The sort of information he may publish is the property price information issued each quarter by the Land Registry (gleaned from lodged transfers etc) and regularly featured in the national and local press. As to the Land Registry, its office and officers see PARA 1064 et seq ante.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(1) THE LAND REGISTRY/(iii) Land Information, Consultancy and Powers in regard to Companies/1073. Consultancy and advisory services.

### **1073. Consultancy and advisory services.**

The Chief Land Registrar<sup>1</sup> may provide, or arrange for the provision of, consultancy or advisory services about the registration of land in England and Wales or elsewhere<sup>2</sup>. The terms on which such services are provided by the registrar, in particular terms as to payment, are to be such as he thinks fit<sup>3</sup>.

1 As to the Chief Land Registrar see PARA 1066 ante.

2 Land Registration Act 2002 s 105(1). For the meanings of 'England' and 'Wales' see PARA 803 note 2 ante.

3 Ibid s 105(2).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(1) THE LAND REGISTRY/(iii) Land Information, Consultancy and Powers in regard to Companies/1074. Incidental powers in relation to companies.

### **1074. Incidental powers in relation to companies.**

If the Chief Land Registrar<sup>1</sup> considers it expedient to do so in connection with certain of his functions<sup>2</sup>, he may:

- 373 (1) form, or participate in the formation of, a company<sup>3</sup>; or
- 374 (2) purchase, or invest<sup>4</sup> in, a company<sup>5</sup>.

This is without prejudice to any other powers of the registrar<sup>6</sup>.

1 As to the Chief Land Registrar see PARA 1066 ante.

2 I.e. his functions under the Land Registration Act 2002 s 69(3)(a) (provision of information about the history of registered titles) (see PARA 1108 post), s 92(1) (provision of electronic communications network for registration) (see PARA 1053 ante), s 94 (electronic settlement) (see PARA 1050 ante), s 105(1) (consultancy and advisory services) (see PARA 1073 ante), or Sch 5 para 10 (education and training in relation to the use of a Land Registry network) (see PARA 1063 ante): see s 106(1).

3 Ibid s 106(1)(a). For these purposes, 'company' means a company within the meaning of the Companies Act 1985 (see COMPANIES vol 14 (2009) PARA 1): Land Registration Act 2002 s 106(2).

4 For these purposes, 'invest' means invest in any way (whether by acquiring assets, securities or rights or otherwise): ibid s 106(2).

5 Ibid s 106(1)(b).

6 Ibid s 106(2).

## **UPDATE**

### **1074 Incidental powers in relation to companies**

NOTE 3--Land Registration Act 2002 s 106(2) definition of 'company' amended: SI 2009/1941.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(2) PROVISIONS REGARDING APPLICATIONS/(i) Applications Generally/1075. Power to make rules about applications.

## **(2) PROVISIONS REGARDING APPLICATIONS**

### **(i) Applications Generally**

#### **1075. Power to make rules about applications.**

Rules<sup>1</sup> may make provision:

375 (1) about the form and content of applications under the Land Registration Act 2002<sup>2</sup>;

376 (2) requiring such applications to be supported by such evidence as the rules may provide<sup>3</sup>;

377 (3) about when such an application is to be taken as made<sup>4</sup>;

378 (4) about the order in which competing applications are to be taken to rank<sup>5</sup>;

379 (5) for an alteration made by the Chief Land Registrar<sup>6</sup> for the purpose of correcting a mistake in an application or accompanying document to have effect in such circumstances as the rules may provide as if made by the applicant or other interested party or parties<sup>7</sup>.

1 As to land registration rules generally see PARA 1125 post.

2 Land Registration Act 2002 s 126, Sch 10 para 6(a).

3 Ibid Sch 10 para 6(b).

4 Ibid Sch 10 para 6(c).

5 Ibid Sch 10 para 6(d).

6 As to the Chief Land Registrar see PARA 1066 ante.

7 Land Registration Act 2002 Sch 10 para 6(e).

## **UPDATE**

## **1075-1083 Applications Generally**

SI 2003/1417 Pt 3 (rr 13-20) does not apply to applications for a network access agreement under the Land Registration Act 2002 Sch 5 para 1(4): Land Registration (Electronic Conveyancing) Rules 2008, SI 2008/1750, Sch 2 Pt 2 para 1.

### **1075 Power to make rules about applications**

TEXT AND NOTES--See the Land Registration (Electronic Conveyancing) Rules 2008, SI 2008/1750.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(2) PROVISIONS REGARDING APPLICATIONS/(i) Applications Generally/1076. Use of prescribed form.

### **1076. Use of prescribed form.**

A form is prescribed to be used for any application made under the Land Registration Act 2002 or the Land Registration Rules 2003<sup>1</sup> for which no other application form is prescribed<sup>2</sup> unless it is:

- 380 (1) an application to remove from the register the name of a deceased joint registered proprietor<sup>3</sup>;
- 381 (2) an application<sup>4</sup> delivered by electronic means<sup>5</sup>; or
- 382 (3) an outline application<sup>6</sup>.

1    Ie the Land Registration Rules 2003, SI 2003/1417.

2    Ibid r 13(1). The form is Sch 1 Form AP1: see r 13(1). As to the use of forms generally see PARA 1087 et seq post.

3    Ibid r 13(2)(a). As to such applications see r 164; and PARA 921 ante.

4    Ie an application made under ibid r 14 (see PARA 1077 post).

5    Ibid r 13(2)(b).

6    Ibid r 13(2)(c). As to outline applications see r 54; and PARA 930 post.

## **UPDATE**

## **1075-1083 Applications Generally**

SI 2003/1417 Pt 3 (rr 13-20) does not apply to applications for a network access agreement under the Land Registration Act 2002 Sch 5 para 1(4): Land Registration (Electronic Conveyancing) Rules 2008, SI 2008/1750, Sch 2 Pt 2 para 1.

### **1076 Use of prescribed form**

NOTE 2--SI 2003/1417 Sch 1 Form AP1 substituted by SI 2008/1919; and amended by SI 2009/1996.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(2) PROVISIONS REGARDING APPLICATIONS/(i) Applications Generally/1077. Electronic delivery of applications.

### **1077. Electronic delivery of applications.**

Certain specific applications<sup>1</sup> may during the currency of any relevant notice<sup>2</sup>, and subject to and in accordance with the limitations contained in that notice, be delivered by electronic means and the applicant must provide, in such manner as may be required by that notice, such of the particulars required for an application of that type as are appropriate in the circumstances and as are required by the notice<sup>3</sup>.

If the Chief Land Registrar<sup>4</sup> is satisfied that adequate arrangements have been made or will be in place for dealing with specified applications and other matters<sup>5</sup> by means other than post, document exchange or personal delivery, he may, in such manner as he thinks appropriate, give notice publicising the arrangements<sup>6</sup>.

Such notice will be current from the time specified in the notice until the time, if any, specified in the notice or if no expiry date is specified in the notice, indefinitely<sup>7</sup>. Such notice may from time to time be varied, suspended, withdrawn, renewed or replaced by a further notice<sup>8</sup>. If and so long as, owing to the breakdown or other unavailability of facilities or data involved in giving effect to the arrangements made for dealing with applications covered by such notice, such arrangements cease, in whole or in part, to be effective, the notice ceases, to the necessary extent, to be treated as current<sup>9</sup>.

1    le any application to which the Land Registration Rules 2003, SI 2003/1417, r 15 (see PARA 1078 post) applies, other than an outline application under r 54 (see PARA 930 post).

2    le any notice given under *ibid* r 14, Sch 2: see the text and notes 3-9 *infra*.

3    *Ibid* r 14.

4    As to the Chief Land Registrar see PARA 1066 *ante*.

5    le the applications and other matters specified in the Land Registration Rules 2003, SI 2003/1417, Sch 2 para 2, namely:

54    (1)   an application by electronic means under r 14 (see the text and notes 1-3 *supra*);

55    (2)   an outline application under r 54 (see PARA 930 post);

56    (3)   a notification of discharge or release of a registered charge under r 115 (see PARA 959 *ante*);

57    (4)   an application and the result of an application or search under Pt 13 (rr 131-160) to which r 132 applies (see PARA 1094 post);

58    (5)   information requested by an applicant for an official search for the purpose of the Family Law Act 1996 under the Land Registration Rules 2003, SI 2003/1417, r 160 (see PARA 1122 post);

59    (6)   a request to the registrar that he require a person to produce documents under r 201(2)(b) (see PARA 1144 post);

60    (7)   a request for an order requiring a party to proceedings before the registrar to pay costs under r 202(5) (see PARA 1145 post).

The provisions referred to in Sch 2 para 2 will not prevent the registrar, at his discretion, from refusing to accept an application or request made, or to issue a result, under any of those provisions in an individual case: Sch 2 para 7.

6 Ibid Sch 2 para 1.

7 Ibid Sch 2 para 3. This is subject to Sch 2 paras 4-6: see the text and notes 8-9 infra.

8 Ibid Sch 2 para 4.

9 Ibid Sch 2 para 5. Sch 2 para 5 applies despite the absence of a variation, suspension or withdrawal of the notice under Sch 2 para 4: Sch 2 para 6.

## UPDATE

### 1075-1083 Applications Generally

SI 2003/1417 Pt 3 (rr 13-20) does not apply to applications for a network access agreement under the Land Registration Act 2002 Sch 5 para 1(4): Land Registration (Electronic Conveyancing) Rules 2008, SI 2008/1750, Sch 2 Pt 2 para 1.

### 1077 Electronic delivery of applications

NOTE 9--SI 2003/1417 Sch 2 para 5 amended: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(2) PROVISIONS REGARDING APPLICATIONS/(i) Applications Generally/1078. Time at which applications are taken to be made.

### 1078. Time at which applications are taken to be made.

An application is to be taken as made at the earlier of:

- 383 (1) the time of the day<sup>1</sup> that notice of it is entered on the day list<sup>2</sup>; or
- 384 (2) either midnight marking the end of the day it was received<sup>3</sup> if the application was received before 12 noon<sup>4</sup> or midnight marking the end of the next business day after the day it was received if the application was received at or after 12 noon<sup>5</sup>.

These provisions do not, however, apply to applications under Part 13 of the Land Registration Rules 2003<sup>6</sup>, other than an application<sup>7</sup> that the Chief Land Registrar designate a document an exempt information document<sup>8</sup>.

1 As to the days on which the Land Registry is open to the public under the Land Registration Rules 2003, SI 2003/1417, r 216 see PARA 1065 ante. As to the Land Registry see PARA 1064 et seq ante.

2 Ibid r 15(1)(a). As to the day list see PARA 820 ante.

3 An application received on a day which is not a business day is to be taken as made at the earlier of: (1) the time of a business day that notice of it is entered in the day list; or (2) midnight marking the end of the next business day after the day it was received: ibid r 15(2). For the purposes of r 15, an application is received when it is delivered: (a) to the designated proper office in accordance with an order under the Land Registration Act 2002 s 100(3) (see PARA 1069 ante); or (b) to the Chief Land Registrar in accordance with a written arrangement as to delivery made between the registrar and the applicant or between the registrar and the applicant's conveyancer; or (c) to the registrar under the provisions of any relevant notice given under the Land

Registration Rules 2003, SI 2003/1417, r 14, Sch 2 (see PARA 1077 ante): r 15(3). For the meaning of 'business day' see PARA 847 note 9 ante. As to the Chief Land Registrar see PARA 1066 ante.

4 Ibid r 15(1)(b)(i).

5 Ibid r 15(1)(b)(ii).

6 Ie ibid Pt 13 (rr 131-160): see PARA 1094 et seq post.

7 Ie under ibid r 136: see PARA 1100 post.

8 Land Registration Rules 2003, SI 2003/1417, r 15(4). For the meaning of 'exempt information document' see PARA 1095 note 10 post.

## **UPDATE**

### **1075-1083 Applications Generally**

SI 2003/1417 Pt 3 (rr 13-20) does not apply to applications for a network access agreement under the Land Registration Act 2002 Sch 5 para 1(4): Land Registration (Electronic Conveyancing) Rules 2008, SI 2008/1750, Sch 2 Pt 2 para 1.

### **1078 Time at which applications are taken to be made**

NOTE 3--SI 2003/1417 r 15(2) amended: SI 2008/1750.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(2) PROVISIONS REGARDING APPLICATIONS/(i) Applications Generally/1079. Requisitions, additional evidence and inquiries.

### **1079. Requisitions, additional evidence and inquiries.**

If an application is not in order the Chief Land Registrar<sup>1</sup> may raise such requisitions as he considers necessary, specifying a period (being not less than 20 business days<sup>2</sup>) within which the applicant must comply with the requisitions<sup>3</sup>. If the applicant fails to comply with the requisitions within that period, the registrar may cancel the application or may extend the period when this appears to him to be reasonable in the circumstances<sup>4</sup>.

If an application appears to the registrar to be substantially defective, he may reject it on delivery or he may cancel it at any time thereafter<sup>5</sup>. Where a fee for an application<sup>6</sup> is paid by means of a cheque and the registrar becomes aware, before the application has been completed, that the cheque has not been honoured, the application may be cancelled<sup>7</sup>.

If the registrar at any time considers that the production of any further documents or evidence or the giving of any notice is necessary or desirable, he may refuse to complete or proceed with the application, or to do any act or make any entry, until such documents, evidence or notices have been supplied or given<sup>8</sup>.

1 As to the Chief Land Registrar see PARA 1066 ante.

2 For the meaning of 'business day' see PARA 847 note 9 ante.

3 Land Registration Rules 2003, SI 2003/1417, r 16(1). As to the substituted period where there has been a notice under r 216(2) see PARA 1065 ante.

4 Ibid r 16(2).

- 5 Ibid r 16(3).
- 6 As to Land Registry fees see PARA 1071 ante.
- 7 Land Registration Rules 2003, SI 2003/1417, r 16(4).
- 8 Ibid r 17.

## **UPDATE**

### **1075-1083 Applications Generally**

SI 2003/1417 Pt 3 (rr 13-20) does not apply to applications for a network access agreement under the Land Registration Act 2002 Sch 5 para 1(4): Land Registration (Electronic Conveyancing) Rules 2008, SI 2008/1750, Sch 2 Pt 2 para 1.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(2) PROVISIONS REGARDING APPLICATIONS/(i) Applications Generally/1080. Continuation and completion of applications.

#### **1080. Continuation and completion of applications.**

If, before an application to the Chief Land Registrar<sup>1</sup> has been completed, the whole of the applicant's interest is transferred by operation of law, the application may be continued by any person entitled to that interest in consequence of that transfer<sup>2</sup>.

Subject to certain exceptions<sup>3</sup>, any entry in, removal of an entry from, or alteration of the register pursuant to an application under the Land Registration Act 2002 or the Land Registration Rules 2003<sup>4</sup> has effect from the time of the making of the application<sup>5</sup>.

- 1 As to the Chief Land Registrar see PARA 1066 ante.
- 2 Land Registration Rules 2003, SI 2003/1417, r 18.
- 3 Ibid r 20(1) (see the text and notes 4-5 infra) does not apply to the applications mentioned in the Land Registration Act 2002 s 74 (see PARA 860 ante): Land Registration Rules 2003, SI 2003/1417, r 20(2).
- 4 Ie under the Land Registration Rules 2003, SI 2003/1417.
- 5 Ibid r 20(1).

## **UPDATE**

### **1075-1083 Applications Generally**

SI 2003/1417 Pt 3 (rr 13-20) does not apply to applications for a network access agreement under the Land Registration Act 2002 Sch 5 para 1(4): Land Registration (Electronic Conveyancing) Rules 2008, SI 2008/1750, Sch 2 Pt 2 para 1.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(2) PROVISIONS REGARDING APPLICATIONS/(i) Applications Generally/1081. Objections to applications.

## 1081. Objections to applications.

Subject to certain exceptions<sup>1</sup>, anyone may object to an application to the Chief Land Registrar<sup>2</sup>. A person must not, however, exercise this right without reasonable cause<sup>3</sup>.

The right to object to an application is subject to rules<sup>4</sup>. Such an objection must be made by delivering to the registrar at the appropriate office<sup>5</sup> a written statement<sup>6</sup> signed by the objector or his conveyancer<sup>7</sup> which must: (1) state that the objector objects to the application; (2) state the grounds for the objection; and (3) give the full name of the objector and an address to which communications may be sent<sup>8</sup>.

Where an objection is so made, the registrar must give notice of the objection to the applicant<sup>9</sup> and may not determine the application until the objection has been disposed of<sup>10</sup>; but this does not apply if the objection is one which the registrar is satisfied is groundless<sup>11</sup>.

If it is not possible to dispose of such an objection<sup>12</sup> by agreement, the registrar must refer the matter to the adjudicator<sup>13</sup>. Rules may make provision about such references<sup>14</sup>.

When the registrar is obliged to refer a matter to the adjudicator<sup>15</sup>, he must as soon as practicable:

- 385 (a) prepare a case summary containing the required information<sup>16</sup>;
- 386 (b) send a copy of the case summary to the parties<sup>17</sup>;
- 387 (c) give the parties<sup>18</sup> an opportunity to make comments on the contents of the case summary in the manner, to the address<sup>19</sup>, and within the time specified<sup>20</sup> by him<sup>21</sup>; and
- 388 (d) inform the parties in writing that the case summary together with copies of the documents listed in it will be sent to the adjudicator with the notice referred to in head (i) below<sup>22</sup>.

The registrar may amend the case summary as he considers appropriate having considered any written comments made to him by the parties<sup>23</sup>.

When the registrar has considered any written comments made by the parties under head (c) above<sup>24</sup> (or, if he has not received any comments from the parties within the time specified under head (c) above, on the expiry of that period<sup>25</sup>), and when he has amended<sup>26</sup> the case summary, if appropriate<sup>27</sup>, he must as soon as practicable:

- 389 (i) send to the adjudicator a written notice, accompanied by the required documents<sup>28</sup>, informing him that the matter is referred to him<sup>29</sup>;
- 390 (ii) inform the parties in writing that the matter has been referred to the adjudicator<sup>30</sup>; and
- 391 (iii) send the parties a copy of the case summary<sup>31</sup> in the form sent to the adjudicator<sup>32</sup>.

1 The subject to the Land Registration Act 2002 s 73(2), (3): see s 73(1). In the case of an application under s 18 (see PARA 858 ante), only the person who lodged the caution to which the application relates, or such other person as rules may provide, may object (s 73(2)); and in the case of an application under s 36 (see PARA 1004 ante), only the person shown in the register as the beneficiary of the notice to which the application relates, or such other person as rules may provide, may object (s 73(3)).

2 Ibid s 73(1). As to the Chief Land Registrar see PARA 1066 ante.

3 Ibid s 77(1)(c). The duty under s 77 is owed to any person who suffers damage in consequence of its breach: s 77(2).

4 Ibid s 73(4). As to land registration rules generally see PARA 1125 post.



5 For the purposes of the Land Registration Rules 2003, SI 2003/1417, r 19, the 'appropriate office' is the same office as the proper office, designated under an order under the Land Registration Act 2002 s 100(3) (see PARA 1069 ante), for the receipt of an application relating to the land in respect of which the objection is made, but on the assumption that if the order contains exceptions none of the exceptions apply to that application: Land Registration Rules 2003, SI 2003/1417, r 19(6).

6 The written statement referred to *ibid* r 19(1) must be delivered: (1) in paper form; or (2) to the electronic address; or (3) to the fax number: r 19(3). In r 19(3) the reference to the electronic address and the fax number is a reference to the electronic address or fax number for the appropriate office specified in a direction by the registrar under the Land Registration Act 2002 s 100(4) (see PARA 1069 ante) as that to be used for delivery of objections: Land Registration Rules 2003, SI 2003/1417, r 19(4). Where a person is objecting to an application in response to a notice given by the registrar, he may alternatively do so in the manner and to the address stated in the notice as provided by r 197(1)(c) (see PARA 1130 post): r 19(5).

7 *Ibid* r 19(1). For the meaning of 'conveyancer' see PARA 832 note 4 ante.

8 *Ibid* r 19(2).

9 Land Registration Act 2002 s 73(5)(a).

10 *Ibid* s 73(5)(b).

11 *Ibid* s 73(6).

12 *Ie* an objection to which *ibid* s 73(5) applies: see the text and notes 9-10 *supra*.

13 *Ibid* s 73(7).

14 *Ibid* s 73(8). As to the rules made see the Land Registration (Referral to the Adjudicator to HM Land Registry) Rules 2003, SI 2003/2114. As to the adjudicator and adjudication see PARA 1146 *et seq* post.

15 *Ie* under the Land Registration Act 2002 s 73(7): see the Land Registration (Referral to the Adjudicator to HM Land Registry) Rules 2003, SI 2003/2114, r 3(1).

16 *Ibid* r 3(1)(a). The case summary must contain the following information: (1) the names of the parties (see note 18 *infra*); (2) the addresses of the parties (see note 19 *infra*); (3) details of their legal or other representatives (if any); (4) a summary of the core facts; (5) details of the disputed application; (6) details of the objection to that application; (7) a list of any documents that will be copied to the adjudicator; and (8) anything else that the registrar may consider to be appropriate: r 3(2).

17 *Ibid* r 3(1)(b).

18 'The parties' means the person who has made the disputed application and the person who has made an objection to that application; 'disputed application' means an application to the registrar under the Land Registration Act 2002 to which an objection has been made; and 'objection' means an objection made under s 73: Land Registration (Referral to the Adjudicator to HM Land Registry) Rules 2003, SI 2003/2114, r 2.

19 If the address of a party set out in the case summary does not comply with *ibid* r 4(2), that party must provide the registrar with one that does: r 4(1). An address complies if it is a postal address in England and Wales, and is either that of the party or of his representative: r 4(2). For the meanings of 'England' and 'Wales' see PARA 803 note 2 ante.

20 For the purposes of *ibid* r 3(1)(c) (see head (c) in the text), the time specified by the registrar must not end before 12 noon on the fifteenth business day after the date on which the registrar sends the copy of the case summary to the relevant party under r 3(1)(b) (see head (b) in the text) or such earlier time as the parties may agree: r 6(1). On and after the date specified in any notice given pursuant to the Land Registration Rules 2003, SI 2003/1417, r 216(2) (see PARA 1065 ante), the Land Registration (Referral to the Adjudicator to HM Land Registry) Rules 2003, SI 2003/2114, r 6(1) has effect with the substitution of the words 'eighteenth business day' for the words 'fifteenth business day': r 6(2). 'Business day' means a day when the Land Registry is open to the public under the Land Registration Rules 2003, SI 2003/1417, r 216 (see PARA 1065 ante): Land Registration (Referral to the Adjudicator to HM Land Registry) Rules 2003, SI 2003/2114, r 2.

21 *Ibid* r 3(1)(c).

22 *Ibid* r 3(1)(d). The notice is the notice referred to in r 5(2) (see head (i) in the text).

23 *Ibid* r 3(3). The comments are those made under r 3(1)(c) (see head (c) in the text).

- 24 Ibid r 5(1)(a).
- 25 Ibid r 5(1)(b).
- 26 Ie under ibid r 3(3) (see the text and note 23 *infra*).
- 27 Ibid r 5(1)(c).
- 28 Ie the case summary prepared under ibid r 3, amended, if appropriate, by the registrar under r 3(3), and copies of the documents listed in that case summary: r 5(3).
- 29 Ibid r 5(2)(a). As to referral see the Land Registration Act 2002 s 73(7); and the text to note 13 *supra*.
- 30 Land Registration (Referral to the Adjudicator to HM Land Registry) Rules 2003, SI 2003/2114, r 5(2)(b).
- 31 Ie prepared under ibid r 3.
- 32 Ibid r 5(2)(c).

## **UPDATE**

### **1075-1083 Applications Generally**

SI 2003/1417 Pt 3 (rr 13-20) does not apply to applications for a network access agreement under the Land Registration Act 2002 Sch 5 para 1(4): Land Registration (Electronic Conveyancing) Rules 2008, SI 2008/1750, Sch 2 Pt 2 para 1.

### **1081 Objections to applications**

NOTE 8--SI 2003/1417 r 19(2) amended: SI 2008/1919.

NOTE 13--See *Jayasinghe v Liyanage* [2010] EWHC 265 (Ch), [2010] 08 EG 105 (CS), [2010] All ER (D) 251 (Feb).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(2) PROVISIONS REGARDING APPLICATIONS/(i) Applications Generally/1082. Correction of mistakes in applications or accompanying documents.

### **1082. Correction of mistakes in applications or accompanying documents.**

The provisions described below apply to any alteration made by the Chief Land Registrar<sup>1</sup> for the purpose of correcting a mistake in any application or accompanying document<sup>2</sup>. In the case of a mistake of a clerical or like nature, the alteration will have effect in all circumstances as if made by the applicant or other interested party or parties<sup>3</sup>. In the case of any other mistake, the alteration will have such effect only if the applicant and any other interested party has requested, or consented to, the alteration<sup>4</sup>.

1 As to the Chief Land Registrar see PARA 1066 *post*.

2 Land Registration Rules 2003, SI 2003/1417, r 130(1). As to documents accompanying applications see PARA 1083 *post*.

3 Ibid r 130(2)(a).

4 Ibid r 130(2)(b).

## UPDATE

### 1075-1083 Applications Generally

SI 2003/1417 Pt 3 (rr 13-20) does not apply to applications for a network access agreement under the Land Registration Act 2002 Sch 5 para 1(4): Land Registration (Electronic Conveyancing) Rules 2008, SI 2008/1750, Sch 2 Pt 2 para 1.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(2) PROVISIONS REGARDING APPLICATIONS/(i) Applications Generally/1083. Documents accompanying applications.

#### 1083. Documents accompanying applications.

A document lodged at the Land Registry<sup>1</sup> dealing with part of the land in a registered title<sup>2</sup> must have attached to it a plan identifying clearly the land dealt with<sup>3</sup>. Where the document is a disposition<sup>4</sup>, the disponor must sign the plan<sup>5</sup>. Where the document is an application, the applicant must sign the plan<sup>6</sup>.

Where a rule in the Land Registration Rules 2003<sup>7</sup> requires that an application be accompanied by an original document (for instance, a grant of representation) the applicant may, instead of lodging the original, lodge a certified<sup>8</sup> or office copy of that document<sup>9</sup>. Where a certified or office copy of a document is permitted<sup>10</sup> to be lodged the Chief Land Registrar may permit an uncertified copy of the document to be lodged instead<sup>11</sup>.

Where:

- 392 (1) the lodging of a document (not being a scheduled form)<sup>12</sup> or other evidence in support of an application is required by the Land Registration Rules 2003<sup>13</sup>; and
- 393 (2) the document or other evidence is in the particular case unnecessary or the purpose of the lodging of the document or other evidence can be achieved by another document or other evidence<sup>14</sup>,

an applicant may request the registrar to be relieved of the requirement<sup>15</sup>.

Such a request must contain evidence to satisfy the registrar as mentioned in head (2) above<sup>16</sup>. If, after considering the request, the registrar is satisfied as mentioned at head (2) above and that neither the rights of any person nor the keeping of the register are likely to be materially prejudiced by relieving the applicant of the requirement, he may so relieve the applicant<sup>17</sup>. If the registrar allows the request it may be on condition that the applicant provides other documents or evidence in support of the application<sup>18</sup>.

1 As to the Land Registry see PARA 1064 et seq ante.

2 As to registered title see PARA 834 et seq post.

3 Land Registration Rules 2003, SI 2003/1417, r 213(1). Rule 213(1) is subject to r 213(4), (5): see r 213(1). If the land dealt with is identified clearly on the title plan of the registered title, it may instead be described by reference to that title plan: r 213(4). Where a disposition complies with r 213, the application lodged in respect of it need not: r 213(5).

4 As to dispositions of registered land see PARA 906 et seq ante.

5 Land Registration Rules 2003, SI 2003/1417, r 213(2).

6 Ibid r 213(3).

7 Ie the Land Registration Rules 2003, SI 2003/1417.

8 For the meaning of 'certified copy' see PARA 832 note 4 ante.

9 Land Registration Rules 2003, SI 2003/1417, r 214(1). Rule 214(1) is subject to r 214(2)-(4): see r 214(1). Rule 214 does not apply to: (1) any document required to be lodged under Pt 4 (rr 13-20) (see PARAS 1076-1081 ante); (2) a scheduled form; (3) a document that is a registrable disposition: r 214(2). Rule 214 does not apply where the Chief Land Registrar considers that the circumstances are such that the original of a document should be lodged and the applicant has possession, or the right to possession, of that original document: r 214(3). For the meaning of 'scheduled form' see PARA 1087 note 11 post. For the meaning of 'registrable disposition' see PARA 911 ante; and see also PARA 911 ante. As to the Chief Land Registrar see PARA 1066 ante.

10 Ie permitted by ibid r 214: see r 214(4).

11 Ibid r 214(4).

12 See note 9 supra.

13 Land Registration Rules 2003, SI 2003/1417, r 215(1)(a). Rule 215 is without prejudice to any of the registrar's powers under the Land Registration Act 2002: Land Registration Rules 2003, SI 2003/1417, r 215(6).

14 Ibid r 215(1)(b). See note 13 supra.

15 Ibid r 215(2). See note 13 supra.

16 Ibid r 215(3). See note 13 supra.

17 Ibid r 215(4) See note 13 supra.

18 Ibid r 215(5). See note 13 supra.

## **UPDATE**

### **1075-1083 Applications Generally**

SI 2003/1417 Pt 3 (rr 13-20) does not apply to applications for a network access agreement under the Land Registration Act 2002 Sch 5 para 1(4): Land Registration (Electronic Conveyancing) Rules 2008, SI 2008/1750, Sch 2 Pt 2 para 1.

### **1083 Documents accompanying applications**

TEXT AND NOTES--As to the required elements in a statement of truth see SI 2003/1417 r 215A (added by SI 2008/1919).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(2) PROVISIONS REGARDING APPLICATIONS/(ii) Retention and Return of Documents/1084. Retention of documents on completion of an application.

## **(ii) Retention and Return of Documents**

### **1084. Retention of documents on completion of an application.**

Subject to the provisions considered below<sup>1</sup>, on completion of any application<sup>2</sup> the Chief Land Registrar<sup>3</sup> may retain all or any of the documents that accompanied the application and must return all other such documents to the applicant or as otherwise specified in the application<sup>4</sup>.

When making an application, an applicant or his conveyancer<sup>5</sup> may request the return of all or any of the documents accompanying the application<sup>6</sup>. Except on an application for first registration<sup>7</sup>, a person making such a request must deliver with the application certified copies<sup>8</sup> of the documents which are the subject of the request<sup>9</sup>. On an application for first registration, a person making a request<sup>10</sup> for the return of any statutory declaration, subsisting lease, subsisting charge<sup>11</sup> or the latest document of title<sup>12</sup> must deliver with the application certified copies of any such documents as are the subject of the request, but he must not be required to deliver copies of any other documents<sup>13</sup>. Subject to the delivery of any certified copies as required<sup>14</sup>, the registrar must comply with any such request<sup>15</sup>.

The registrar may destroy any document retained<sup>16</sup> if he is satisfied that either: (1) he has made and retained a sufficient copy of the document<sup>17</sup>; or (2) further retention of the document is unnecessary<sup>18</sup>. If the registrar considers that he no longer requires delivery of certified copies of documents, or classes of documents, under this provision he may, in such manner as he thinks appropriate for informing persons who wish to make applications, give notice<sup>19</sup> to that effect; and on and after the date specified in such notice: (a) the requirement to deliver certified copies of the documents covered by the notice no longer applies<sup>20</sup>; and (b) the registrar may amend any prescribed form<sup>21</sup> to reflect that fact<sup>22</sup>.

1    Ie subject to the Land Registration Rules 2003, SI 2003/1417, r 203(2)-(5) (see the text and notes 5-15 *infra*).

2    As to applications generally see PARAS 1075 *et seq ante*, 1131 *post*.

3    As to the Chief Land Registrar see PARA 1066 *ante*.

4    Land Registration Rules 2003, SI 2003/1417, r 203(1).

5    For the meaning of 'conveyancer' see PARA 832 note 4 *ante*.

6    Land Registration Rules 2003, SI 2003/1417, r 203(2).

7    As to first registration see PARA 826 *et seq ante*.

8    For the meaning of 'certified copy' see PARA 832 note 4 *ante*.

9    Land Registration Rules 2003, SI 2003/1417, r 203(3).

10   Ie a request under *ibid* r 203(2).

11   For the meaning of 'charge' see PARA 861 note 5 *ante*.

12   For these purposes, the 'latest document of title' means the document vesting the estate sought to be registered in the applicant or where the estate vested in the applicant by operation of law the most recent document that vested the estate in a predecessor of the applicant: Land Registration Rules 2003, SI 2003/1417, r 203(8).

13   *Ibid* r 203(4).

14   Ie required by *ibid* r 203(3), (4) (see the text and notes 7-13 *supra*).

15   *Ibid* r 203(5). The request referred to in the text is one under r 203(2) (see the text to note 6 *supra*).

16   Ie retained under *ibid* r 203(1) (see the text and notes 1-4 *supra*).

17   *Ibid* r 203(6)(a).

18   *Ibid* r 203(6)(b).

- 19 As to notice generally see PARA 1130 post.
- 20 Land Registration Rules 2003, SI 2003/1417, r 203(7)(a).
- 21 Ie any form in ibid Sch 1. As to the use of forms generally see PARA 1087 et seq post.
- 22 Ibid r 203(7)(b).

## UPDATE

### 1084 Retention of documents on completion of an application

TEXT AND NOTES--SI 2003/1417 r 203 modified: SI 2008/1750.

NOTE 13--SI 2003/1417 r 203(4) amended: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(2) PROVISIONS REGARDING APPLICATIONS/(ii) Retention and Return of Documents/1085. Request for the return of certain documents.

### 1085. Request for the return of certain documents.

The provisions considered below apply to all documents on which any entry in the register of title<sup>1</sup> is or was founded and which were kept by the Chief Land Registrar<sup>2</sup> on 13 October 2003<sup>3</sup>. During the period of five years beginning with that date any person who delivered a document to the registrar may request the return of that document<sup>4</sup>.

Where at the time of the delivery of the document the person delivering the document was the registered proprietor, or was applying to become the registered proprietor, of any registered estate<sup>5</sup> or registered charge<sup>6</sup> in respect of which the entry referred to above<sup>7</sup> was made, a person who is at the date of the request the registered proprietor of any part of the same registered estate or registered charge may make a request<sup>8</sup> for the document to be returned to him<sup>9</sup>.

If, at the date of the above request, the document is kept by the registrar he must return it to the person making the request<sup>10</sup>; and, if the registrar receives more than one such request in respect of the same document, he may either retain the document or, in his discretion, return it to one of the persons making a request<sup>11</sup>.

At the end of the above period<sup>12</sup> if there is no outstanding request in relation to the document the registrar may destroy any document if he is satisfied that: (1) he has retained a copy of the document<sup>13</sup>; or (2) further retention of the document is unnecessary<sup>14</sup>.

1 As to the register of title see PARA 811 et seq ante.

2 As to the Chief Land Registrar see PARA 1066 ante.

3 Land Registration Rules 2003, SI 2003/1417, r 204(1). The date referred in the text to is the 'relevant date' (see r 204(8)) for the purpose of r 204, being the date on which the Land Registration Rules 2003, SI 2003/1417, came into force.

4 Ibid r 204(2). Where a request is made for the return of a document after the end of the period mentioned in r 204(2), the registrar may treat the request as a request under r 204 (2): r 204(7).

5 For the meaning of 'registered estate' see PARA 861 note 3 ante.

6 For the meaning of 'registered charge' see PARA 861 note 8 ante.

- 7     le the entry referred to in the Land Registration Rules 2003, SI 2003/1417, r 204(1) (see the text and notes 1-3 supra).
- 8     le a request under ibid r 204(2) (see the text and note 2 supra).
- 9     Ibid r 204(3).
- 10    Ibid r 204(4).
- 11    Ibid r 204(5).
- 12    le the period mentioned in ibid r 204(2) (see the text and note 2 supra).
- 13    Ibid r 204(6)(a).
- 14    Ibid r 204(6)(b).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(2) PROVISIONS REGARDING APPLICATIONS/(ii) Retention  
and Return of Documents/1086. Release of documents kept by the Chief Land Registrar.

#### **1086. Release of documents kept by the Chief Land Registrar.**

The Chief Land Registrar<sup>1</sup> may release any document retained<sup>2</sup> upon such terms, if any, for its return as he considers appropriate<sup>3</sup>.

- 1     As to the Chief Land Registrar see PARA 1066 ante.
- 2     le documents retained under the Land Registration Rules 2003, SI 2003/1417, r 203(1) (see PARA 1084 ante) or to which r 204 (see PARA 1085 ante) applies: see r 205.
- 3     Ibid r 205.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(2) PROVISIONS REGARDING APPLICATIONS/(iii) Forms/1087.  
Use of forms.

### **(iii) Forms**

#### **1087. Use of forms.**

With some qualifications<sup>1</sup>, the forms in Schedule 1 to the Land Registration Rules 2003<sup>2</sup> must be used where required by the rules and must be prepared in accordance with the relevant statutory requirements<sup>3</sup>. With similar qualifications<sup>4</sup>, except where the Rules require the use of such a Schedule 1 form, the forms in Schedule 3 to the Land Registration Rules 2003<sup>5</sup> must be used in all matters to which they refer, or are capable of being applied or adapted, with such alterations and additions as are desired and the Chief Land Registrar<sup>6</sup> allows<sup>7</sup>. The forms in Schedule 3 are more free-form in concept than the Schedule 1 forms and more susceptible of adaptation. With one qualification<sup>8</sup>, the forms of execution in Schedule 9 to the Land Registration Rules 2003<sup>9</sup> must be used in the execution of dispositions<sup>10</sup> in the scheduled forms<sup>11</sup> in the cases for which they are provided, or are capable of being applied or adapted, with such alterations and additions, if any, as the registrar may allow<sup>12</sup>.

A requirement in the Land Registration Rules 2003 to use a scheduled form is subject, where appropriate, to the provisions in the rules relating to the making of applications and issuing results of applications other than in paper form, during the currency of a notice given under Schedule 2 to the Land Registration Rules 2003<sup>13</sup>.

- 1 The Land Registration Rules 2003, SI 2003/1417, r 206(1), (2) is subject to r 206(4) (see the text and note 13 *infra*), r 208 (see PARA 1089 *post*) and r 209 (see PARA 1090 *post*): see r 206(1), (2).
- 2 *Ibid* the forms in *ibid* r 11, Sch 1 ('Schedule 1 forms': see note 11 *infra*).
- 3 *Ibid* r 206(1). The statutory requirements are the requirements of r 210 (see PARA 1091 *post*) and r 211 (see PARA 1092 *post*): see r 206(1).
- 4 See note 1 *supra*.
- 5 *Ibid* the forms in the Land Registration Rules 2003, SI 2003/1417, r 61, Sch 3 ('Schedule 3 forms': see note 11 *infra*).
- 6 As to the Chief Land Registrar see PARA 1066 *ante*.
- 7 Land Registration Rules 2003, SI 2003/1417, r 206(2).
- 8 *Ibid* r 206(3) is subject to r 208(2) (see PARA 1089 *post*): see r 206(3).
- 9 *Ibid* the forms of execution in *ibid* r 206(3), Sch 9.
- 10 As to dispositions of registered land see PARA 906 *et seq post*.
- 11 'Scheduled form' means a Schedule 1 form or a Schedule 3 form; 'Schedule 1 form' means a form in the Land Registration Rules 2003, SI 2003/1417, Sch 1; and 'Schedule 3 form' means a form in Sch 3: r 217(1).
- 12 *Ibid* r 206(3).
- 13 *Ibid* r 206(4). As to r 14, Sch 2 see PARAS 1077 *ante*, 1094 *post*.

## UPDATE

### 1087 Use of forms

NOTE 3--SI 2003/1417 r 206(1) amended: SI 2008/1919.

NOTE 5--SI 2003/1417 r 61 amended: SI 2007/1898. SI 2003/1417 Sch 3 amended: SI 2007/1898, SI 2008/1919.

NOTE 9--SI 2003/1417 Sch 9 amended: SI 2008/1919, SI 2009/1996.

NOTE 11--SI 2003/1417 Sch 1 amended: SI 2009/2748.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(2) PROVISIONS REGARDING APPLICATIONS/(iii) Forms/1088. Adaptation of certain Schedule 1 forms to provide for direct debit.

### 1088. Adaptation of certain Schedule 1 forms to provide for direct debit.

Where:

- 394 (1) a form in Schedule 1 to the Land Registration Rules 2003<sup>1</sup> has a payment of fee panel which does not provide for payment by direct debit<sup>2</sup>; and



- 395 (2) a fee order<sup>3</sup> permits, where there is an agreement with the Chief Land Registrar<sup>4</sup>, payment by direct debit of the fee for the matter in respect of which that form is prescribed<sup>5</sup>; and
- 396 (3) the registrar intends to enter into an agreement under the fee order which will enable a person to pay that fee by direct debit<sup>6</sup>,

the registrar may amend the payment of fee panel of the affected form to include provision for payment by direct debit and make any consequential amendments to the form<sup>7</sup>.

- 1 le a form in the Land Registration Rules 2003, SI 2003/1417, r 11, Sch 1 (see PARA 1087 ante).
- 2 Ibid r 207(1)(a).
- 3 le a fee order made under the Land Registration Act 2002 s 102 (see PARA 1071 ante) and the Public Offices Fees Act 1879 ss 2, 3 (as amended) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS): see the Land Registration Rules 2003, SI 2003/1417, r 207(1)(b).
- 4 As to the Chief Land Registrar see PARA 1066 ante.
- 5 Land Registration Rules 2003, SI 2003/1417, r 207(1)(b).
- 6 Ibid r 207(1)(c).
- 7 Ibid r 207(2). Where a form has been amended under r 207(2) a person not paying by direct debit may use the form as amended or as unamended: r 207(3).

## UPDATE

### 1088 Adaptation of certain Schedule 1 forms to provide for direct debit

TEXT AND NOTES--Revoked: SI 2008/1919. In order to assist applicants in completing a form or in making an application in relation to a form, the registrar may remove, add to, or alter any explanatory information outside the panels of an SI 2003/1417 Sch 1 form: SI 2003/1417 r 207A(1) (r 207A added by SI 2008/1919). Any amendment under r 207A(1) must not alter the name and description of the form at the top of the first page or instructions as to what must be entered in the form: r 207A(2) (r 207A as added). Where a form has been amended under r 207A(1) a person may use the form for the purposes of these rules as amended or as unamended: r 207A(3) (r 207A as added).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(2) PROVISIONS REGARDING APPLICATIONS/(iii) Forms/1089. Welsh language forms.

### 1089. Welsh language forms.

Where the Chief Land Registrar<sup>1</sup>, in exercise of his powers under the Land Registration Act 2002<sup>2</sup>, publishes an instrument as the Welsh language version of a scheduled form<sup>3</sup>, the instrument is regarded as being in the scheduled form<sup>4</sup>.

In place of the form of execution provided by Schedule 9 to the Land Registration Rules 2003<sup>5</sup>, such an instrument may be executed using a form of execution approved by the registrar as the Welsh language version of the Schedule 9 form<sup>6</sup>.

An instrument containing a statement approved by the registrar as the Welsh language version of a statement prescribed by the rules is regarded as containing the prescribed statement<sup>7</sup>; and an instrument containing a provision approved by the registrar as the Welsh language version of a provision prescribed by the rules is regarded as containing the prescribed provision<sup>8</sup>.

- 1 As to the Chief Land Registrar see PARA 1066 ante.
- 2 Ie under the Land Registration Act 2002 s 100(4) (see PARA 1069 ante).
- 3 For the meaning of 'scheduled form' see PARA 1087 note 11 ante.
- 4 Land Registration Rules 2003, SI 2003/1417, r 208(1).
- 5 Ie ibid r 206(3), Sch 9 (see PARA 1087 ante).
- 6 Ibid r 208(2).
- 7 Ibid r 208(3).
- 8 Ibid r 208(4).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(2) PROVISIONS REGARDING APPLICATIONS/(iii) Forms/1090. Use of non-prescribed forms.

### **1090. Use of non-prescribed forms.**

Where:

- 397 (1) an application<sup>1</sup> should be accompanied by a scheduled form<sup>2</sup> and a person wishes to make an application relying instead upon an alternative document that is not the relevant scheduled form<sup>3</sup>; and
- 398 (2) it is not possible for that person to obtain and lodge the relevant scheduled form (duly executed, if appropriate) at the Land Registry<sup>4</sup> or it is only possible to do so at unreasonable expense<sup>5</sup>,

such a person may make a request to the Chief Land Registrar, either before or at the time of making the application which should be accompanied by the relevant scheduled form, that he be permitted to rely upon the alternative document<sup>6</sup>. Such a request must contain evidence to satisfy the registrar as mentioned in head (2) above and include the original, or, if the request is made before the application, a copy, of the alternative document<sup>7</sup>.

If, after considering the request, the registrar is satisfied as mentioned in head (2) above and is satisfied that neither the rights of any person nor the keeping of the register<sup>8</sup> are likely to be materially prejudiced by allowing the alternative document to be relied upon instead of the relevant scheduled form, he may permit such reliance<sup>9</sup>. If the registrar allows the request it may be on condition that the person making the request provides other documents or evidence in support of the application<sup>10</sup>.

- 1 As to applications for registration see PARA 1075 et seq ante.
- 2 For the meaning of 'scheduled form' see PARA 1087 note 11 ante.

3 Land Registration Rules 2003, SI 2003/1417, r 209(1)(a). Rule 209 is without prejudice to any of the Chief Land Registrar's powers under the Land Registration Act 2002: Land Registration Rules 2003, SI 2003/1417, r 209(6). As to the Chief Land Registrar see PARA 1066 ante.

4 As to the Land Registry see PARA 1064 et seq ante.

5 Land Registration Rules 2003, SI 2003/1417, r 209(1)(b). See note 3 supra.

6 Ibid r 209(2). See note 3 supra.

7 Ibid r 209(3). See note 3 supra.

8 As to the register of title see PARA 811 et seq ante.

9 Land Registration Rules 2003, SI 2003/1417, r 209(4). See note 3 supra.

10 Ibid r 209(5). See note 3 supra.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(2) PROVISIONS REGARDING APPLICATIONS/(iii) Forms/1091. Documents in a Schedule 1 form.

### **1091. Documents in a Schedule 1 form.**

Subject to the provisions on electronically produced forms<sup>1</sup>, any application or document in one of the forms in Schedule 1 to the Land Registration Rules 2003<sup>2</sup> must:

- 399 (1) be printed on durable A4 size paper<sup>3</sup>;
- 400 (2) be reproduced as set out in the Schedule as to its wording, layout, ruling, font and point size<sup>4</sup>; and
- 401 (3) contain all the information required in an easily legible form<sup>5</sup>.

Where on a Schedule 1 form<sup>6</sup> any panel is insufficient in size to contain the required insertions, and the method of production of the form does not allow the depth of the panel to be increased, the information to be inserted in the panel must be continued on a continuation sheet in the prescribed form<sup>7</sup>. When completing a Schedule 1 form containing an additional provisions panel, any statement, certificate or application required or permitted by the Land Registration Rules 2003 to be included in the form for which the form does not otherwise provide and any additional provisions desired by the parties must be inserted in that panel or a continuation of it<sup>8</sup>. Where the form consists of more than one sheet of paper, or refers to an attached plan or a continuation sheet, all the sheets and any plan must be securely fastened together<sup>9</sup>.

1 le subject to the Land Registration Rules 2003, SI 2003/1417, r 211 (see PARA 1092 post).

2 As to forms in ibid r 11, Sch 1 ('Schedule 1 forms') see PARA 1087 ante.

3 Ibid r 210(1)(a).

4 Ibid r 210(1)(b).

5 Ibid r 210(1)(c).

6 le other than ibid Sch 1 Form DL. See also PARA 1087 ante.

7 Ibid r 210(2). The prescribed form is Sch 1 Form CS. See also PARA 1087 ante.

8 Ibid r 210(3).

9 Ibid r 210(4).

## UPDATE

### 1091 Documents in a Schedule 1 form

NOTE 4--SI 2003/1417 r 210(1)(b) amended: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(2) PROVISIONS REGARDING APPLICATIONS/(iii) Forms/1092.  
Electronically produced forms.

### 1092. Electronically produced forms.

Where the method of production of a form in Schedule 1 to the Land Registration Rules 2003<sup>1</sup> permits<sup>2</sup>:

- 402 (1) the depth of a panel may be increased or reduced to fit the material to be comprised in it, and a panel may be divided at a page break<sup>3</sup>;
- 403 (2) instructions in italics may be omitted<sup>4</sup>;
- 404 (3) inapplicable certificates and statements may be omitted<sup>5</sup>;
- 405 (4) the plural may be used instead of the singular and the singular instead of the plural<sup>6</sup>;
- 406 (5) panels which would contain only the panel number and the panel heading may be omitted, but such omission must not affect the numbering of subsequent panels<sup>7</sup>;
- 407 (6) 'X' boxes may be omitted where all inapplicable statements and certificates have been omitted<sup>8</sup>;
- 408 (7) the sub-headings in an additional provisions panel may be added to, amended, repositioned or omitted<sup>9</sup>;
- 409 (8) 'Seller' may be substituted for 'Transferor' and 'Buyer' for 'Transferee' in a transfer on sale<sup>10</sup>;
- 410 (9) the vertical lines which define the left and right boundaries of the panel may be omitted<sup>11</sup>.

1 As to forms in the Land Registration Rules 2003, SI 2003/1417, r 11, Sch 1 ('Schedule 1 forms') see PARA 1087 ante.

2 As to electronic applications etc see PARAS 1077 ante, 1094 post.

3 Land Registration Rules 2003, SI 2003/1417, r 211(1)(a).

4 Ibid r 211(1)(b).

5 Ibid r 211(1)(c).

6 Ibid r 211(1)(d).

7 Ibid r 211(1)(e).

8 Ibid r 211(1)(f).

9 Ibid r 211(1)(g).

10 Ibid r 211(1)(h).

11 Ibid r 211(1)(i).

## **UPDATE**

### **1092 Electronically produced forms**

NOTES--SI 2003/1417 r 211 amended: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(2) PROVISIONS REGARDING APPLICATIONS/(iii) Forms/1093. Documents where no form is prescribed.

### **1093. Documents where no form is prescribed.**

Documents for which no form is prescribed must be in such form as the Chief Land Registrar<sup>1</sup> may direct or allow<sup>2</sup>.

A document prepared under these provisions must not bear the number of a form in Schedule 1 to the Land Registration Rules 2003<sup>3</sup>. A document affecting a registered title<sup>4</sup> must refer to the title number<sup>5</sup>.

1 As to the Chief Land Registrar see PARA 1066 ante.

2 Land Registration Rules 2003, SI 2003/1417, r 212(1).

3 Ibid r 212(2). As to forms in r 11, Sch 1 ('Schedule 1 forms') see PARA 1087 ante.

4 As to registered title see PARA 834 et seq ante.

5 Land Registration Rules 2003, SI 2003/1417, r 212(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(i) Inspection, Copying and Official Copies/A. IN GENERAL/1094. Delivery of applications and issuing of certificates by electronic and other means.

## **(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS**

### **(i) Inspection, Copying and Official Copies**

#### **A. IN GENERAL**

### **1094. Delivery of applications and issuing of certificates by electronic and other means.**

During the currency of a relevant notice<sup>1</sup>, and subject to and in accordance with the limitations contained in that notice, any application under Part 13 of the Land Registration Rules 2003<sup>2</sup>

may be made by delivering the application to the Chief Land Registrar<sup>3</sup> by any means of communication other than post, document exchange or personal delivery, and the applicant must provide, in such order as may be required by that notice, such of the particulars required for an application of that type as are appropriate in the circumstances and as are required by the notice<sup>4</sup>. During the currency of such relevant notice, and subject to and in accordance with the limitations contained in that notice, any certificates and other results of applications and searches under Part 13 of the Land Registration Rules 2003 may be issued by any means of communication other than post, document exchange or personal delivery<sup>5</sup>.

1   le a notice given under the Land Registration Rules 2003, SI 2003/1417, s 14, Sch 2 (see PARA 1077 ante).

2   le under *ibid* Pt 13 (rr 131-160).

3   As to the Chief Land Registrar see PARA 1066 ante.

4   Land Registration Rules 2003, SI 2003/1417, r 132(1).

5   *Ibid* r 132(2). Except where otherwise provided in Pt 13, where information is issued under r 132(2) it must be to like effect to that which would have been provided had the information been issued in paper form: r 132(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(i) Inspection, Copying and Official Copies/A. IN GENERAL/1095. Right to inspect the registers etc.

### **1095. Right to inspect the registers etc.**

Any person may inspect and make copies of, or of any part of:

- 411 (1) the register of title<sup>1</sup>;
- 412 (2) any document kept by the Chief Land Registrar<sup>2</sup> which is referred to in the register of title<sup>3</sup>;
- 413 (3) any other document kept by the registrar which relates to an application to him<sup>4</sup>; or
- 414 (4) the register of cautions against first registration<sup>5</sup>.

This right is, however, subject to rules<sup>6</sup> which may, in particular, provide for exceptions to the right<sup>7</sup> and impose conditions on its exercise, including conditions requiring the payment of fees<sup>8</sup>.

There are a number of specific exceptions to the right<sup>9</sup> to inspect and make copies of the registers and documents<sup>10</sup>. An application<sup>11</sup> for inspection and copying must (subject to delivery by electronic and other means) be in the prescribed form<sup>12</sup>. Where inspection and copying takes place at an office of the Land Registry<sup>13</sup> it must be undertaken in the presence of a member of the registry<sup>14</sup>.

1   Land Registration Act 2002 s 66(1)(a). As to the register of title see PARA 811 et seq ante.

2   As to the Chief Land Registrar see PARA 1066 ante.

3   Land Registration Act 2002 s 66(1)(b).

4   *Ibid* s 66(1)(c). As to applications to the registrar see generally para 1075 et seq ante.

5 Ibid s 66(1)(d). As to the register of cautions against first registration see PARA 849 et seq ante.

6 As to land registration rules generally see PARA 1125 post.

7 Land Registration Act 2002 s 66(2)(a).

8 Ibid s 66(2)(b). As to Land Registry fees see PARA 1071 ante.

9 le the right under ibid s 66(1) (see the text and notes 1-5 supra).

10 Land Registration Rules 2003, SI 2003/1417, r 133(1), (2). Excepted from the right are: (1) any exempt information document; (2) any edited information document which has been replaced by another edited information document under r 136(6) (see PARA 1100 post); (3) any Sch 1 Form EX1A; (4) any Sch 1 Form CIT; (5) any form to which Sch 1 Form CIT has been attached under r 140(3) or r 140(4) (see PARA 1104 post); (6) any document or copy of any document prepared by the registrar in connection with an application in a form to which Sch 1 Form CIT has been attached under r 140(3) or r 140(4): r 133(2). 'Exempt information document' means the original and copies of a document so designated under r 136(3) (see PARA 1100 post); and 'edited information document' means, where the registrar has designated a document an exempt information document, the edited copy of that document lodged under r 136(2)(b) (see PARA 1100 post): r 131. As to the use of forms generally see PARA 1087 et seq ante.

11 le under the Land Registration Act 2002 s 66 (see the text and notes 1-8 supra).

12 Land Registration Rules 2003, SI 2003/1417, r 133(3). This is subject to r 132(1) (see PARA 1094 ante). The prescribed form is Sch 1 Form PIC: see r 133(3).

13 As to the Land Registry see PARA 1064 et seq ante.

14 Land Registration Rules 2003, SI 2003/1417, r 133(4).

## UPDATE

### 1095 Right to inspect the registers etc

TEXT AND NOTES 9-14--SI 2003/1417 r 133 substituted: SI 2008/1919.

NOTE 10--SI 2003/1417 Sch 1 Form CIT substituted by SI 2008/1919; and amended by SI 2009/1996; SI 2009/2748.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND  
REGISTRY DOCUMENTS/(i) Inspection, Copying and Official Copies/A. IN GENERAL/1096.  
Official copies of the registers etc.

### 1096. Official copies of the registers etc.

An official copy<sup>1</sup> of, or of a part of:

- 415 (1) the register of title<sup>2</sup>;
- 416 (2) any document which is referred to in the register of title and kept by the Chief Land Registrar<sup>3</sup>;
- 417 (3) any other document kept by the registrar which relates to an application to him<sup>4</sup>; or
- 418 (4) the register of cautions against first registration<sup>5</sup>,

is admissible in evidence to the same extent as the original<sup>6</sup>.

A person who relies on an official copy in which there is a mistake is not liable for loss suffered by another by reason of the mistake<sup>7</sup> but a person suffering such loss is entitled to an indemnity<sup>8</sup>.

Rules<sup>9</sup> may make provision for the issue of official copies and may, in particular, make provision about:

- 419 (a) the form of official copies;
- 420 (b) who may issue official copies;
- 421 (c) applications for official copies; and
- 422 (d) the conditions to be met by applicants for official copies, including conditions requiring the payment of fees<sup>10</sup>.

1 In the Land Registration Act 2002, the term 'official copy' replaces the term 'office copy' used in the earlier legislation: see eg the Land Registration Act 1925 s 113 (repealed).

2 Land Registration Act 2002 s 67(1)(a). As to the register of title see PARA 811 et seq ante.

3 Ibid s 67(1)(b). As to the Chief Land Registrar see PARA 1066 ante.

4 Ibid s 67(1)(c). As to applications to the registrar see generally para 1075 post.

5 Ibid s 67(1)(d). As to the register of cautions against first registration see PARA 849 et seq ante.

6 Land Registration Act 2002 s 67(1). As to the admissibility in evidence of documents and official copies see CIVIL PROCEDURE vol 11 (2009) PARA 876 et seq.

7 Ibid s 67(2).

8 See ibid s 103, Sch 8 para 1(1)(c); and PARA 983 ante.

9 As to land registration rules generally see PARA 1125 post.

10 Land Registration Act 2002 s 67(3). As to Land Registry fees see PARA 1071 ante.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(i) Inspection, Copying and Official Copies/A. IN GENERAL/1097. Conclusiveness of filed copies etc.

### **1097. Conclusiveness of filed copies etc.**

Where a disposition relates to land<sup>1</sup> to which a registered estate<sup>2</sup> relates and an entry in the register<sup>3</sup> relating to the registered estate refers to a document kept by the Chief Land Registrar<sup>4</sup> which is not an original<sup>5</sup>, then, as between the parties to the disposition, the document kept by the registrar is to be taken to be correct and to contain all the material parts of the original document<sup>6</sup>.

No party to the disposition may require production of the original document<sup>7</sup>. No party to the disposition is to be affected by any provision of the original document which is not contained in the document kept by the registrar<sup>8</sup>.

1 As to the meaning of 'land' see PARA 826 note 4 ante.

2 For the meaning of 'registered estate' see PARA 861 note 3 ante.

3 As to the register of title see PARA 811 et seq ante.



4 As to the Chief Land Registrar see PARA 1066 ante.

5 Land Registration Act 2002 s 120(1).

6 Ibid s 120(2).

7 Ibid s 120(3).

8 Ibid s 120(4).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(i) Inspection, Copying and Official Copies/A. IN GENERAL/1098. Application for certain official copies of the registers.

### **1098. Application for certain official copies of the registers.**

A person may apply for an official copy of: (1) an individual register<sup>1</sup>; (2) any title plan<sup>2</sup> referred to in an individual register; or (3) an individual caution register<sup>3</sup> and any caution plan<sup>4</sup> referred to in it<sup>5</sup>. A person may also apply for a certificate of inspection of any title plan<sup>6</sup>; this is a certificate that will confirm whether or not a numbered plot is within the vendor's title, and is useful for an applicant who is, for example, buying land from a developer. Such application must be in the prescribed form<sup>7</sup>.

A separate application must be made in respect of each registered title<sup>8</sup> or individual caution register<sup>9</sup>. Where, notwithstanding this, an application is in respect of more than one registered title or individual caution register, but the applicant fails to provide a title number<sup>10</sup> or the title number provided does not relate to any part of the property in respect of which the application is made, the Chief Land Registrar<sup>11</sup> may deal with the application as if it referred only to one of the title numbers relating to the property<sup>12</sup> or as if it referred to all of the title numbers relating to the property<sup>13</sup>. Alternatively, the registrar may cancel the application<sup>14</sup>.

An official copy of an individual caution register and any caution plan referred to in it must be issued without regard to any application or matter that may affect the subsistence of the caution<sup>15</sup>.

1 For the meaning of 'individual register' see PARA 812 note 3 ante.

2 As to the meaning of 'title plan' see PARA 814 ante.

3 For the meaning of 'individual caution register' see PARA 851 note 1 ante.

4 As to the caution plan see PARA 851 ante.

5 Land Registration Rules 2003, SI 2003/1417, r 134(1)(a)-(c).

6 Ibid r 134(1)(d); and see PARA 1107 post.

7 Ibid r 134(2). This is subject to r 132(1) (see PARA 1094 ante). The prescribed form is Sch 1 Form OC1: see r 134(2). As to the use of forms generally see PARA 1087 et seq ante.

8 As to the meaning of 'registered title' see PARA 834 ante.

9 Land Registration Rules 2003, SI 2003/1417, r 134(3).

10 In ibid r 134(4), the reference to title number includes, in the case of an individual caution register, a caution title number: r 134(5).

11 As to the Chief Land Registrar see PARA 1066 ante.

12 Land Registration Rules 2003, SI 2003/1417, r 134(4)(a).

13 Ibid r 134(4)(b). Where the registrar deals with the application under r 134(4)(b), the applicant is to be treated as having made a separate application in respect of each of the registered titles or each of the individual caution registers: r 134(6).

14 Ibid r 134(4)(c).

15 Ibid r 134(7).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(i) Inspection, Copying and Official Copies/A. IN GENERAL/1099. Application for official copies of documents referred to in the register and other documents kept by the Chief Land Registrar.

### **1099. Application for official copies of documents referred to in the register and other documents kept by the Chief Land Registrar.**

Subject to certain exceptions<sup>1</sup>, a person may apply for an official copy of: (1) any document referred to in the register<sup>2</sup> and kept by the Chief Land Registrar<sup>3</sup>; and (2) any other document kept by the registrar that relates to an application to him<sup>4</sup>. Such an application must (subject to delivery by electronic and other means) be made in the prescribed form<sup>5</sup>.

1 The subject, during the transitional period, to the Land Registration Rules 2003, SI 2003/1417, r 139 (see PARA 1103 post): r 135(1), (3). Also excepted are: (1) any exempt information document; (2) any edited information document which has been replaced by another edited information document under r 136(6) (see PARA 1100 post); (3) any Sch 1 Form EX1A; (4) any Sch 1 Form CIT; (5) any form to which Sch 1 Form CIT has been attached under r 140(3) or r 140(4) (see PARA 1104 post); (6) any document or copy of any document prepared by the Chief Land Registrar in connection with an application in a form to which Sch 1 Form CIT has been attached under r 140(3) or r 140(4): r 135(1), (2). For the meaning of 'transitional period' see PARA 1103 note 2 post. For the meanings of 'exempt information document' and 'edited information document' see PARA 1095 note 10 ante; and see also PARA 1100 post. In r 135(2), the references to Sch 1 Form EX1A and Sch 1 Form CIT and forms to which Sch 1 Form CIT has been attached include any equivalent information provided under r 132 (see PARA 1094 ante) and the reference to an application in a form to which Sch 1 Form CIT has been attached includes an equivalent application made by virtue of r 132: r 135(5). As to the use of forms generally see PARA 1087 et seq ante. As to the Chief Land Registrar see PARA 1066 ante.

2 As to the register of title see PARA 811 et seq ante.

3 Land Registration Rules 2003, SI 2003/1417, r 135(1)(a).

4 Ibid r 135(1)(b). As to applications to the registrar generally see PARA 1075 et seq ante.

5 Ibid r 135(4). This is subject to r 132(1) (see PARA 1094 ante). The prescribed form is Sch 1 Form OC2: see r 135(4).

### **UPDATE**

### **1099 Application for official copies of documents referred to in the register and other documents kept by the Chief Land Registrar**

TEXT AND NOTES--SI 2003/1417 r 135 substituted: SI 2008/1919.

NOTE 1--SI 2003/1417 Sch 1 Form CIT substituted by SI 2008/1919; and amended by SI 2009/1996; SI 2009/2748.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(i) Inspection, Copying and Official Copies/B. EXEMPT INFORMATION DOCUMENTS/1100. Application that Chief Land Registrar designate a document an exempt information document.

## ***B. EXEMPT INFORMATION DOCUMENTS***

### **1100. Application that Chief Land Registrar designate a document an exempt information document.**

A person may apply for the Chief Land Registrar<sup>1</sup> to designate a relevant document<sup>2</sup> an exempt information document<sup>3</sup> if he claims that the document contains prejudicial information<sup>4</sup>. The application must (subject to delivery by electronic and other means) be made in the prescribed form<sup>5</sup> and must include a copy of the relevant document which excludes the prejudicial information and which is certified<sup>6</sup> as being a true copy of the relevant document from which copy this information has been excluded<sup>7</sup>.

Provided that the registrar is satisfied that the applicant's claim is not groundless he must designate the relevant document an exempt information document<sup>8</sup>. However, where the registrar considers that designating the document an exempt information document could prejudice the keeping of the register, he must cancel the application<sup>9</sup>.

Where a document is an exempt commercial information document, the registrar may make an appropriate entry in the individual register<sup>10</sup> of any affected registered title<sup>11</sup>. Where a document is an exempt information document and a further application is made<sup>12</sup> which would, but for the existing designation, have resulted in its being so designated, the registrar must prepare another edited information document which excludes the information excluded from the existing edited information document and any further information excluded from the edited information document lodged by the applicant<sup>13</sup>.

1 As to the Chief Land Registrar see PARA 1066 ante.

2 For these purposes, a 'relevant document' is a document: (1) referred to in the register of title, or that relates to an application to the registrar, the original or a copy of which is kept by the registrar; or (2) that will be referred to in the register of title as a result of an application (the 'accompanying application') made at the same time as an application under the Land Registration Rules 2003, SI 2003/1417, r 136 (see the text and notes 3-13 infra), or that relates to the accompanying application, the original or a copy of which will be kept by the registrar: r 136(7). As to the register of title see PARA 811 et seq ante.

3 For the meaning of 'exempt information document' see PARA 1095 note 10 ante; and see also the text to note 8 infra.

4 Land Registration Rules 2003, SI 2003/1417, r 136(1). 'Prejudicial information' means: (1) information that relates to an individual who is the applicant under r 136 and if disclosed to other persons (whether to the public generally or specific persons) would, or would be likely to, cause substantial unwarranted damage or substantial unwarranted distress to the applicant or another; or (2) information that if disclosed to other persons (whether to the public generally or to specific persons) would, or would be likely to, prejudice the commercial interests of the applicant under r 136: r 131.

5 Ibid r 136(2)(a). This is subject to r 132(1) (see PARA 1094 ante). The prescribed forms are Sch 1 Form EX1 and Sch 1 Form EX1A: see r 136(2). As to the use of forms generally see PARA 1087 et seq ante.

6 As to certified copies see CIVIL PROCEDURE vol 11 (2009) PARA 887.

- 7 Land Registration Rules 2003, SI 2003/1417, r 136(2)(b). This is the 'edited information document': see also PARA 1095 note 10 ante.
- 8 Ibid r 136(3).
- 9 Ibid r 136(4).
- 10 For the meaning of 'individual register' see PARA 812 note 3 ante.
- 11 Land Registration Rules 2003, SI 2003/1417, r 136(5). As to the meaning of 'registered title' see PARA 834 ante.
- 12 Ie under ibid r 136(1) (see the text and notes 1-4 supra).
- 13 Ibid r 136(6).

## UPDATE

### **1100 Application that Chief Land Registrar designate a document an exempt information document**

TEXT AND NOTES 5-7--SI 2003/1417 r 136(2) substituted: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(i) Inspection, Copying and Official Copies/B. EXEMPT INFORMATION DOCUMENTS/1101. Application for official copy of exempt information document.

### **1101. Application for official copy of exempt information document.**

A person may apply for an official copy of an exempt information document<sup>1</sup>. The application must (subject to delivery by electronic and other means) be made in the prescribed form<sup>2</sup>. The Chief Land Registrar<sup>3</sup> must give notice of such an application<sup>4</sup> to the person who made the relevant application for designation<sup>5</sup> unless he is satisfied that such notice is unnecessary or impracticable<sup>6</sup>.

If the registrar decides that: (1) none of the information excluded from the edited information document<sup>7</sup> is prejudicial information<sup>8</sup>; or (2) although all or some of the information excluded is prejudicial information, the public interest in providing an official copy of the exempt information document to the applicant outweighs the public interest in not doing so, then he must provide an official copy of the exempt information document to the applicant<sup>9</sup>.

Where the registrar has decided such an application<sup>10</sup> on the basis that none of the information is prejudicial information, he must remove the designation of the document as an exempt information document and any entry made in respect of the document<sup>11</sup>.

- 1 Land Registration Rules 2003, SI 2003/1417, r 137(1). For the meaning of 'exempt information document' see PARA 1095 note 10 ante; and see also PARA 1100 ante.
- 2 Ibid r 137(2). This is subject to r 132(1) (see PARA 1094 ante). The prescribed form is Sch 1 Form EX2: see r 137(2). As to the use of forms generally see PARA 1087 et seq ante.
- 3 As to the Chief Land Registrar see PARA 1066 ante.
- 4 Ie an application under the Land Registration Rules 2003, SI 2003/1417, r 137(1).
- 5 Ie the relevant application under ibid r 136(1) (see PARA 1100 ante).

6 Ibid r 137(3).

7 For the meaning of 'edited information document' see PARA 1095 note 10 ante; and see also PARA 1100 ante.

8 For the meaning of 'prejudicial information' see PARA 1100 note 4 ante.

9 Land Registration Rules 2003, SI 2003/1417, r 137(4).

10 Ie an application under ibid r 137(1) (see the text and note 1 supra).

11 Ibid r 137(5). Such an entry is made under r 136(5) (see PARA 1100 ante).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(i) Inspection, Copying and Official Copies/B. EXEMPT INFORMATION DOCUMENTS/1102. Removal of designation as exempt information document.

### **1102. Removal of designation as exempt information document.**

Where a document is an exempt commercial information document<sup>1</sup> the person who applied for designation<sup>2</sup> may apply for such designation to be removed<sup>3</sup>. The application must (subject to delivery by electronic and other means) be made in the prescribed form<sup>4</sup>.

Where the Chief Land Registrar<sup>5</sup> is satisfied that the application is in order, he must remove the designation of the document as an exempt information document and remove any entry made in respect of the document<sup>6</sup>. However, where: (1) the document has been made an exempt information document under more than one application; (2) an application<sup>7</sup> is made by fewer than all of the applicants for designation<sup>8</sup>; and (3) the registrar is satisfied that the application is in order, the registrar must replace the existing edited information document<sup>9</sup> with one that excludes only the information excluded both from that edited information document and the edited information documents lodged<sup>10</sup> by those applicants not applying under these provisions<sup>11</sup>.

1 For the meaning of 'exempt information document' see PARA 1095 note 10 ante; and see also PARA 1100 ante.

2 Ie the person who applied for designation under the Land Registration Rules 2003, SI 2003/1417, r 136(1) (see PARA 1100 ante); see r 138(1).

3 Ibid r 138(1).

4 Ibid r 138(2). This is subject to r 132(1) (see PARA 1094 ante). The prescribed form is Sch 1 Form EX3: see r 138(2). As to the use of forms generally see PARA 1087 et seq ante.

5 As to the Chief Land Registrar see PARA 1066 ante.

6 Land Registration Rules 2003, SI 2003/1417, r 138(3). Such entry is made under r 136(5) (see PARA 1100 ante).

7 Ie an application under ibid r 138(1) (see the text and notes 1-3 supra).

8 Ie applicants under ibid r 136(1) (see PARA 1100 ante).

9 For the meaning of 'edited information document' see PARA 1095 note 10 ante; and see also PARA 1100 ante.

10 Ie under the Land Registration Rules 2003, SI 2003/1417, r 136(2)(b) (see PARA 1100 ante).

11 Ibid r 138(4).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND  
REGISTRY DOCUMENTS/(i) Inspection, Copying and Official Copies/C. OTHER SPECIAL  
CASES/1103. Transitional period documents.

### ***C. OTHER SPECIAL CASES***

#### **1103. Transitional period documents.**

Subject to certain exceptions<sup>1</sup>, during the transitional period<sup>2</sup> a person may only inspect and make copies of, or of any part of, a transitional period document or obtain an official copy of such a document at the Chief Land Registrar's<sup>3</sup> discretion<sup>4</sup>. A 'transitional period document' means:

- 423 (1) a lease or charge<sup>5</sup> or a copy lease or charge kept by the registrar since before 13 October 2003, where an entry referring to the lease or charge was made in the register of title before 13 October 2003<sup>6</sup>; or
- 424 (2) any other document kept by the registrar which is not referred to in the register of title but relates to an application to the registrar and was received by him before 13 October 2003<sup>7</sup>.

1 The subject to the Land Registration Rules 2003, SI 2003/1417, r 140(2) (see PARA 1104 post) and to r 139(2) (see note 4 infra): see r 139(1).

2 'Transitional period' means the period of two years beginning with the commencement date: *ibid* r 131. The 'commencement date' means the date of commencement of Pt 13 (rr 131-160) (ie 13 October 2003): r 131.

3 As to the Chief Land Registrar see PARA 1066 ante.

4 Land Registration Rules 2003, SI 2003/1417, r 139(1). Where a transitional period document is an exempt information document, r 139(1) does not apply: r 139(2). For the meaning of 'exempt information document' see PARA 1095 note 10 ante; and see also PARA 1100 ante.

5 For the meaning of 'charge' see PARA 861 note 5 ante.

6 As to the register of title see PARA 811 et seq ante. The date mentioned in the text is the commencement date (see note 2 supra)

7 Land Registration Rules 2003, SI 2003/1417, r 131.

### **UPDATE**

#### **1103 Transitional period documents**

TEXT AND NOTES 1-4--SI 2003/1417 r 139 revoked: SI 2008/1919.

TEXT AND NOTE 7--Meanings of 'transitional period' and 'transitional period document' omitted: SI 2003/1417 r 131 (amended by SI 2008/1919).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND

REGISTRY DOCUMENTS/(i) Inspection, Copying and Official Copies/C. OTHER SPECIAL CASES/1104. Application in connection with criminal proceedings, insolvency and tax liability.

#### **1104. Application in connection with criminal proceedings, insolvency and tax liability.**

A qualifying applicant<sup>1</sup> may apply: (1) to inspect or make copies of any document (including a form)<sup>2</sup> and, during the transitional period<sup>3</sup>, any transitional period document<sup>4</sup>; (2) for official copies of any document (including a form)<sup>5</sup> and, during the transitional period, any transitional period document; and (3) for a search in the index of proprietors' names<sup>6</sup> in respect of the name of a person specified in the application<sup>7</sup>. Such an application must (subject to delivery by electronic and other means) be in the prescribed form<sup>8</sup>.

1 For the purposes of the Land Registration Rules 2003, SI 2003/1417, r 140, a 'qualifying applicant' is a person referred to Sch 5 who gives the registrar the appropriate certificate in Sch 1 Form CIT or, where r 132 applies, an equivalent certificate in accordance with a notice given under Sch 2 (see PARAS 1077, 1094 ante): r 140(1). The persons and certificates in Sch 5 (see also note 8 infra) are as follows:

- 61 (1) an administrator appointed for the purposes of the Insolvency Act 1986: Certificate K;
- 62 (2) an administrator appointed under the Criminal Justice (Scotland) Act 1987 s 13: Certificate J;
- 63 (3) a Chief Officer of Police or a police officer authorised to apply on behalf of a Chief Officer (see POLICE vol 36(1) (2007 Reissue) PARA 178 et seq): Certificate A, Certificate B, Certificate C, Certificate D, Certificate E, Certificate G;
- 64 (4) a person commissioned by the Commissioners of Customs and Excise (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq): Certificate C, Certificate D, Certificate E, Certificate H;
- 65 (5) a person authorised to apply by the Commissioners of Inland Revenue (see INCOME TAXATION vol 23(1) (Reissue) PARA 31): Certificate E;
- 66 (6) a person authorised to apply by the Commissioners of Inland Revenue and having the consent of a General or Special Commissioner to make the application: Certificate L;
- 67 (7) a constable: Certificate H;
- 68 (8) the Director of the Assets Recovery Agency or a member of the Assets Recovery Agency authorised to apply on behalf of the Director: Certificate H, Certificate I, Certificate M;
- 69 (9) the Director of Public Prosecutions (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq) or a member of the Crown Prosecution Service (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1079 et seq) authorised to apply on behalf of the Director: Certificate A, Certificate B, Certificate C, Certificate D, Certificate E;
- 70 (10) the Director of the Serious Fraud Office (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1089 et seq) or a member of the Serious Fraud Office authorised to apply on behalf of the Director: Certificate A, Certificate B, Certificate E;
- 71 (11) the Director-General of the Security Service (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 471, 475 et seq) or a member of the Security Service authorised to apply on behalf of the Director-General: Certificate F;
- 72 (12) a liquidator appointed for the purposes of the Insolvency Act 1986: Certificate K;
- 73 (13) the Lord Advocate or a person conducting a prosecution in Scotland on behalf of the Lord Advocate: Certificate C, Certificate D;
- 74 (14) the Official Assignee for bankruptcy for Northern Ireland or the Official Assignee for company liquidations for Northern Ireland: Certificate K;

- 75 (15) an Official Receiver for the purposes of the Insolvency Act 1986: Certificate K;
- 76 (16) a receiver appointed under the Criminal Justice Act 1988, the Drug Trafficking Act 1994 or the Proceeds of Crime Act 2002 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE; RECEIVERS vol 39(2) (Reissue) PARA 310 et seq): Certificate J;
- 77 (17) the Scottish Ministers or a person named by them: Certificate I;
- 78 (18) a person authorised by the Secretary of State for the Department of Trade and Industry (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 505 et seq): Certificate A, Certificate B, Certificate E;
- 79 (19) a person authorised by the Secretary of State for Work and Pensions (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 502 et seq): Certificate A, Certificate B;
- 80 (20) a trustee in bankruptcy, being either a trustee in bankruptcy of a person adjudged bankrupt in England and Wales or Northern Ireland or a permanent or interim trustee in the sequestration of a debtor's estate in Scotland: Certificate K.

For the meanings of 'England' and 'Wales' see PARA 803 note 2 ante.

2 Ie within the Land Registration Rules 2003, SI 2003/1417, r 133(2) (see PARA 1095 ante).

3 For the meaning of 'transitional period' see PARA 1103 note 2 ante.

4 For the meaning of 'transitional period document' see PARA 1103 ante.

5 Ie within the Land Registration Rules 2003, SI 2003/1417, r 135(2) (see PARA 1099 ante).

6 As to the index of proprietors' names see PARA 819 ante.

7 Land Registration Rules 2003, SI 2003/1417, r 140(2).

8 Ibid r 140(3). This is subject to r 132(1) (see PARA 1094 ante). The prescribed form is Sch 1 Form PIC, Form OC2 or Form PN1, as appropriate, with Sch 1 Form CIT attached: see r 140(3). As to the use of forms generally see PARA 1087 et seq ante.

A qualifying applicant who applies: (1) to inspect and make copies of registers and documents not within r 140(2)(a) (see head (1) in the text) under the Land Registration Act 2002 s 66 (see PARA 1095 ante); (2) for official copies of registers and plans under the Land Registration Rules 2003, SI 2003/1417, r 134(1) (see PARA 1098 ante) and of documents not within r 140(2)(b) (see head (2) in the text) under r 135 (see PARA 1099 ante); (3) for an historical edition of a registered title under r 144 (see PARA 1109 post); (4) for an official search of the index map under r 145 (see PARA 1111 post); or (5) for an official search of the index of relating franchises and manors under r 146 (see PARA 1112 post), may attach Sch 1 Form CIT to the Sch 1 Form PIC, Form OC1, Form OC2, Form HC1, Form SIM or Form SIF, as appropriate, used in the application: r 140(4). In Sch 1 Form CIT and Sch 5 (see note 1 supra), references to tax are references to any of the taxes mentioned in the definition of tax in the Taxes Management Act 1970 s 118(1) (as amended) (see INCOME TAXATION vol 23(1) (Reissue) PARA 21): Land Registration Rules 2003, SI 2003/1417, r 140(5).

## UPDATE

### **1104 Application in connection with criminal proceedings, insolvency and tax liability**

NOTE 1--Reference in head (4) now to Commissioners for Her Majesty's Revenue and Customs; heads (5), (8) revoked; head (18) Department for Business, Innovation and Skills; new heads (21) an authorised person within the meaning of the Environment Act 1995 s 108(15) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 148) (Certificate P); (22) the Director of Enforcement at the Financial Services Authority or a member of the Financial Services Authority authorised to apply on behalf of the Director of Enforcement (Certificate Q): SI 2003/1417 Sch 5 (amended by SI 2005/1766, SI 2007/3224, SI 2008/574, SI 2008/1919, SI 2009/2748).

NOTE 7--SI 2003/1417 r 140(2) amended: SI 2008/1919.



NOTE 8--A qualifying applicant who applies for a search in the index of proprietors' names under SI 2003/1417 r 140(2) may apply at the same time in the Form CIT attached to the Form PN1 for official copies of every individual register referred to in the entries (if any) in the index relating to the particulars given in the search application: r 140(4A) (added by SI 2005/1766).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(i) Inspection, Copying and Official Copies/D. MISCELLANEOUS APPLICATIONS/1105. Day list information.

## ***D. MISCELLANEOUS APPLICATIONS***

### **1105. Day list information.**

A person may only apply for the day list information<sup>1</sup> relating to a specified title number<sup>2</sup> during the currency of a relevant notice<sup>3</sup> and subject to and in accordance with the limitations contained in the notice<sup>4</sup>.

The Chief Land Registrar will provide the day list information in the manner specified in the relevant notice<sup>5</sup>. Unless otherwise stated by him, the day list information provided is based on the entries subsisting in the day list immediately before the information is provided<sup>6</sup>.

The registrar is not required to disclose<sup>7</sup> details of an application for designation of a document as an exempt information document<sup>8</sup>.

1 For these purposes, 'day list information' means information kept by the Chief Land Registrar under the Land Registration Rules 2003, SI 2003/1417, r 12 (see PARA 820 ante): r 141(1). As to the Chief Land Registrar see PARA 1066 ante.

2 As to the meaning of 'title number' see PARA 813 ante.

3 I.e a notice given under the Land Registration Rules 2003, SI 2003/1417 r 14, Sch 2 (see PARA 1077 ante): r 141(2).

4 Ibid r 141(2).

5 Ibid r 141(3).

6 Ibid r 141(4).

7 I.e under ibid r 141.

8 Ibid r 141(5). As to applications for designation of a document as an exempt information document see r 136; and PARA 1100 ante.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(i) Inspection, Copying and Official Copies/D. MISCELLANEOUS APPLICATIONS/1106. Inquiry as to discharge of charge by electronic means.

### **1106. Inquiry as to discharge of charge by electronic means.**

A person may apply in respect of a specified registered title<sup>1</sup> for confirmation of receipt by the Chief Land Registrar<sup>2</sup> of notification of: (1) the discharge of a registered charge<sup>3</sup> given by electronic means; or (2) the release of part of a registered estate<sup>4</sup> from a registered charge given by electronic means<sup>5</sup>. Such an application may only be made during the currency of a relevant notice<sup>6</sup> and subject to and in accordance with the limitations contained in the notice<sup>7</sup>.

The registrar is not required to disclose under this provision any information concerning a notification once the entries of the registered charge to which it relates have been cancelled from the relevant registered title or the affected part of it<sup>8</sup>.

1 As to the meaning of 'registered title' see PARA 834 ante.

2 As to the Chief Land Registrar see PARA 1066 ante.

3 For the meaning of 'registered charge' see PARA 861 note 8 ante.

4 For the meaning of 'registered estate' see PARA 861 note 3 ante.

5 Land Registration Rules 2003, SI 2003/1417, r 142(1). As to the discharge of a registered charge see PARA 959 ante.

6 Is a notice given under ibid r 14, Sch 2 (see PARAS 1077, 1094 ante): see r 142(2).

7 Ibid r 142(2).

8 Ibid r 142(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(i) Inspection, Copying and Official Copies/D. MISCELLANEOUS APPLICATIONS/1107. Application for certificate of inspection of title plan.

### **1107. Application for certificate of inspection of title plan.**

A person may apply for a certificate of inspection of a title plan<sup>1</sup>. The procedure for making such applications is dealt with elsewhere in this title<sup>2</sup>.

Where a person has so applied, on completion of the inspection the Chief Land Registrar<sup>3</sup> must issue a certificate of inspection<sup>4</sup>. The certificate of inspection must (subject to issue by electronic and other means) be in the prescribed form<sup>5</sup>.

1 Land Registration Rules 2003, SI 2003/1417, r 134(1)(d). As to the meaning of 'title plan' see PARA 814 ante.

2 See ibid r 134; and PARA 1098 ante.

3 As to the Chief Land Registrar see PARA 1066 ante.

4 Land Registration Rules 2003, SI 2003/1417, r 143(1).

5 Ibid r 143(2). This is subject to r 132(1) (see PARA 1094 ante). The prescribed form for the issue of the certificate by the registrar must be in the form prescribed in Sch 1 Form C1 or to like effect: see r 143(2). As to the use of forms generally see PARA 1087 et seq ante.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(ii) Historical Information/1108. Statutory power to provide historical information.

## **(ii) Historical Information**

### **1108. Statutory power to provide historical information.**

The Chief Land Registrar<sup>1</sup> may on application<sup>2</sup> provide information about the history of a registered title<sup>3</sup>. Rules<sup>4</sup> may make provision about applications for the exercise of this power<sup>5</sup>.

The registrar may: (1) arrange for the provision of information about the history of registered titles<sup>6</sup>; and (2) authorise anyone who has the function of providing such information to have access on such terms as the registrar thinks fit to any relevant information kept by him<sup>7</sup>.

1 As to the Chief Land Registrar see PARA 1066 ante.

2 As to application for an historical edition of a registered title see PARA 1109 post. As to the meaning of 'registered title' see PARA 834 ante.

3 Land Registration Act 2002 s 69(1). There was no equivalent provision under the Land Registration Act 1925, although in practice information as to the devolution of a registered title might be provided if the applicant could demonstrate a good reason for wishing to see it: see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARA 9.59. As to the circumstances in which it is envisaged that the new statutory power may be exercised see *Land Registration for the Twenty-first Century, a Conveyancing Revolution* (Law Com no 271) (2001) PARAS 9.58, 9.60.

4 As to land registration rules generally see PARA 1125 post. See also PARA 1109 post.

5 Land Registration Act 2002 s 69(2).

6 Ibid s 69(3)(a).

7 Ibid s 69(3)(b).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(ii) Historical Information/1109. Application for and issue of historical edition of a registered title kept by the Chief Land Registrar in electronic form.

### **1109. Application for and issue of historical edition of a registered title kept by the Chief Land Registrar in electronic form.**

A person may apply for a copy of: (1) the last edition for a specified day; or (2) every edition for a specified day, of a registered title<sup>1</sup>, and of a registered title that has been closed, kept by the Chief Land Registrar<sup>2</sup> in electronic form<sup>3</sup>. The application must be made (subject to delivery by electronic and other means) in the prescribed form<sup>4</sup>.

If such an application is in order and the registrar is keeping in electronic form an edition of the registered title for the day specified in the application, he must issue: (a) if the application is under head (1) above, a paper copy of the edition of the registered title at the end of that day<sup>5</sup>; or (b) if the application is under head (2) above, a paper copy of the edition of the registered title at the end of that day and any prior edition kept in electronic form of the registered title

for that day<sup>6</sup>. Where only part of the edition of the registered title requested is kept by the registrar in electronic form he must issue a paper copy of that part<sup>7</sup>.

- 1 As to the meaning of 'registered title' see PARA 834 ante.
- 2 As to the Chief Land Registrar see PARA 1066 ante.
- 3 Land Registration Rules 2003, SI 2003/1417, r 144(1).
- 4 Ibid r 144(2). This is subject to r 132(1) (see PARA 1094 ante). The prescribed form is Sch 1 Form HC1: see r 144(2). As to the use of forms generally see PARA 1087 et seq ante.
- 5 Ibid r 144(3)(a). Rule 144(3)(a), (b), (4) is subject to r 132(2) (see PARA 1094 ante): see r 144(3), (4).
- 6 Ibid r 144(3)(b). See note 5 supra.
- 7 Ibid r 144(4). See note 5 supra.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(iii) Official Searches/A. IN GENERAL/1110. Power to make provision for official searches and for priority periods in connection with them.

### **(iii) Official Searches**

#### **A. IN GENERAL**

#### **1110. Power to make provision for official searches and for priority periods in connection with them.**

Rules<sup>1</sup> may make provision for official searches of the register<sup>2</sup>, including searches of pending applications for first registration<sup>3</sup>, and may, in particular, make provision about:

- 425 (1) the form of applications for searches<sup>4</sup>;
- 426 (2) the manner in which such applications may be made<sup>5</sup>;
- 427 (3) the form of official search certificates<sup>6</sup>; and
- 428 (4) the manner in which such certificates may be issued<sup>7</sup>.

Rules may also make provision for priority periods in connection with official searches of the register, including searches of pending applications for first registration<sup>8</sup>, and for the keeping of records in relation to priority periods and the inspection of such records<sup>9</sup> and may, in particular, make provision about:

- 429 (a) the commencement and length of a priority period<sup>10</sup>;
- 430 (b) the applications for registration to which such a period relates<sup>11</sup>;
- 431 (c) the order in which competing priority periods rank<sup>12</sup>; and
- 432 (d) the application of the provisions relating to priority protection for applications for entries in the register<sup>13</sup> where more than one priority period relates to the same application<sup>14</sup>.

- 1 As to land registration rules generally see PARA 1125 post. See also PARA 1111 et seq post.
- 2 As to the register of title see PARA 811 et seq ante.

- 3 Land Registration Act 2002 s 70. As to applications for first registration see PARA 826 et seq ante.
- 4 Ibid s 70(a).
- 5 Ibid s 70(b).
- 6 Ibid s 70(c).
- 7 Ibid s 70(d).
- 8 Ibid s 72(6)(a)(i). As to priority protection for applications for entries in the register see PARA 821 ante; and as to priority protection for the noting in the register of a contract for the making of a registrable disposition of a registered estate or charge see PARA 821 ante.
- 9 Ibid s 72(6)(b).
- 10 Ibid s 72(7)(a).
- 11 Ibid s 72(7)(b).
- 12 Ibid s 72(7)(c).
- 13 Ie the application of ibid s 72(2), (3) (see PARA 821 ante): s 72(7)(d).
- 14 Ibid s 72(7)(d).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND  
REGISTRY DOCUMENTS/(iii) Official Searches/B. OFFICIAL SEARCHES OF THE INDEX/1111.  
Searches of the index map.

## ***B. OFFICIAL SEARCHES OF THE INDEX***

### **1111. Searches of the index map.**

Any person may apply for an official search of the index map<sup>1</sup>. The application must (subject to delivery by electronic and other means) be made in the prescribed form<sup>2</sup>. If the Chief Land Registrar<sup>3</sup> so requires, an applicant must provide a copy or an extract from the Ordnance Survey map on the largest scale published showing the land to which the application relates<sup>4</sup>.

If the application is in order<sup>5</sup>, a paper certificate must be issued including such specified<sup>6</sup> information as the case may require<sup>7</sup>.

1 Land Registration Rules 2003, SI 2003/1417, r 145(1). As to the index kept under the Land Registration Act 2002 s 68 see PARA 817 et seq ante. 'Index map' has the meaning given by the Land Registration Rules 2003, SI 2003/1417, r 10(1)(a) (see PARA 818 ante): r 217(1).

2 Ibid r 145(2). This is subject to r 132(1) (see PARA 1094 ante). The prescribed form is Sch 1 Form SIM: see r 145(2). As to the use of forms generally see PARA 1087 et seq ante.

3 As to the Chief Land Registrar see PARA 1066 post. As to the Ordnance Survey see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1110 et seq.

4 Land Registration Rules 2003, SI 2003/1417, r 145(3).

5 Ibid r 145(4) is subject to r 132(2) (see PARA 1094 ante): see r 145(4).

6 Ie specified in ibid r 145, Sch 6 Pt 1. The information specified is as follows:

- 81 (1) the date and time of the official search certificate;
  - 82 (2) a description of the land searched;
  - 83 (3) the reference (if any) of the applicant or the person to whom the search is being sent: limited to 25 characters including spaces;
  - 84 (4) whether there is:
    - 1. (a) a pending application for first registration (other than of title to a relating franchise);  
1
    - 2. (b) a pending application for a caution against first registration (other than where the subject of the caution is a relating franchise);  
2
    - 3. (c) a registered estate in land;  
3
    - 4. (d) a registered rentcharge;  
4
    - 5. (e) a registered profit à prendre in gross;  
5
    - 6. (f) a registered affecting franchise; or  
6
    - 7. (g) a caution against first registration (other than where the subject of the caution is a relating franchise),  
7
  - 85 and, if there is such a registered estate or caution, the title number.
- 7 Ibid r 145(4).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(iii) Official Searches/B. OFFICIAL SEARCHES OF THE INDEX/1112. Searches of the index of relating franchises and manors.

### **1112. Searches of the index of relating franchises and manors.**

Any person may apply for an official search of the index of relating franchises and manors<sup>1</sup>. The application must (subject to delivery by electronic and other means) be made in the prescribed form<sup>2</sup>.

If the application is in order<sup>3</sup>, a paper certificate must be issued including such specified<sup>4</sup> information as the case may require<sup>5</sup>.

1 Land Registration Rules 2003, SI 2003/1417, r 146(1). As to the index kept under the Land Registration Act 2002 s 68 see PARA 817 et seq ante. 'Index of relating franchises and manors' is the index described in the Land Registration Rules 2003, SI 2003/1417, r 10(1)(b) (see PARA 818 ante): r 217(1).

2 Ibid r 146(2). This is subject to r 132(1) (see PARA 1094 ante). The prescribed form is Sch 1 Form SIF: see ibid r 146(2). As to the use of forms generally see PARA 1087 et seq ante.

3 Ibid r 146(3) is subject to r 132(2) (see PARA 1094 ante): see r 146(3).

4 Ie specified in ibid r 145, Sch 6 Pt 2. The information specified is as follows:

- 86 (1) the date and time of the official search certificate;
- 87 (2) the administrative area(s) searched;

- 88 (3) the reference (if any) of the applicant or the person to whom the search is being sent, limited to 25 characters including spaces;
- 89 (4) whether there is a verbal description of:
8. (a) a pending application for first registration of title to a relating franchise;  
8
  9. (b) a pending application for a caution against first registration where the subject of the caution is a relating franchise;  
9
  10. (c) a registered franchise which is a relating franchise;  
10
  11. (d) a registered manor; or  
11
  12. (e) a caution against first registration where the subject of the caution is a relating franchise,  
12
- 90 and the title numbers of any such registered estates and cautions arranged by administrative area.
- 5 Ibid r 146(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(iii) Official Searches/C. OFFICIAL SEARCHES WITH PRIORITY/1113. Application for official search with priority by purchaser.

### ***C. OFFICIAL SEARCHES WITH PRIORITY***

#### **1113. Application for official search with priority by purchaser.**

A purchaser<sup>1</sup> may apply for an official search with priority of the individual register<sup>2</sup> of a registered title<sup>3</sup> to which the protectable disposition<sup>4</sup> relates<sup>5</sup>; and, where there is a pending application for first registration<sup>6</sup>, the purchaser of a protectable disposition which relates to that pending application may apply for an official search with priority in relation to that pending application<sup>7</sup>. An application for an official search with priority must (subject to delivery by electronic and other means) be made in the prescribed form<sup>8</sup>.

If such an application has been made by telephone or orally<sup>9</sup> in respect of a registered title, the Chief Land Registrar may, before or after the official search has been completed, at his discretion, inform the applicant by telephone or orally whether or not: (1) there have been any relevant adverse entries made in the individual register since the 'search from date'<sup>10</sup> given in the application; or (2) there is any relevant entry subsisting on the day list<sup>11</sup>. He need not, however, provide the applicant with details of any relevant entries<sup>12</sup>.

If such an application has been made by telephone or orally<sup>13</sup> in respect of a legal estate subject to a pending application for first registration, the registrar may, before or after the official search has been completed, at his discretion, inform the applicant, by telephone or orally, whether or not there is any relevant entry subsisting on the day list<sup>14</sup>. Again, he need not provide the applicant with details of any relevant entries<sup>15</sup>.

Finally, if such an application has been made to the Land Registry computer system<sup>16</sup> from a remote terminal<sup>17</sup>, the registrar may, before or after the official search has been completed, at his discretion, inform the applicant, by a transmission to the remote terminal, whether or not: (a) in the case of an official search of a registered title, there have been any relevant entries of

the kind referred to in head (1) or head (2) above; or (b) in the case of an official search of a legal estate subject to a pending application for first registration, there have been any relevant entries subsisting on the day list<sup>18</sup>. He need not provide the applicant with details of any relevant entries<sup>19</sup>.

1 For these purposes, 'purchaser' means a person who has entered into or intends to enter into a protectable disposition as donee; and 'protectable disposition' means a registrable disposition (including one by virtue of the Land Registration Rules 2003, SI 2003/1417, r 38 (see PARA 828 ante)) of a registered estate or registered charge made for valuable consideration: r 131. As to the meaning of 'valuable consideration' see PARA 827 note 7 ante.

2 For the meaning of 'individual register' see PARA 812 note 3 ante.

3 As to the meaning of 'registered title' see PARA 834 ante.

4 For the meaning of 'protectable disposition' see note 1 supra.

5 Land Registration Rules 2003, SI 2003/1417, r 147(1).

6 As to first registration see PARA 826 et seq ante.

7 Land Registration Rules 2003, SI 2003/1417, r 147(2).

8 Ibid r 147(3). This is subject to r 132(1) (see PARA 1094 ante). The prescribed form is Sch 1 Form OS1 or Sch 1 Form OS2, as appropriate: see r 147(3). Where the application is made in Sch 1 Form OS2 and an accompanying plan is required, unless the Chief Land Registrar allows otherwise, the plan must be delivered in duplicate: r 147(3). As to the use of forms generally see PARA 1087 et seq ante. As to the Chief Land Registrar see PARA 1066 ante.

9 Ie by virtue of ibid r 132(1) (see PARA 1094 ante): see r 157(1).

10 'Search from date' means: (1) the date stated on an official copy of the individual register of the relevant registered title, as the date on which the entries shown on that official copy were subsisting; (2) the date stated at the time of an access by remote terminal, where provided for under the Land Registration Rules 2003, SI 2003/1417, to the individual register of the relevant registered title as the date on which the entries accessed were subsisting: r 131.

11 Ibid r 157(1). As to the day list see PARA 820 ante.

12 Ibid r 157(4).

13 Ie by virtue of ibid r 132(1) (see PARA 1094 ante): see r 157(2).

14 Ibid r 157(2).

15 See note 12 supra.

16 As to the Land Registry see PARA 1064 et seq ante. As to the Land Registry network see PARA 1053 et seq ante.

17 Ie by virtue of the Land Registration Rules 2003, SI 2003/1417, r 132(1) (see PARA 1094 ante): see r 157(3).

18 Ibid r 157(3).

19 See note 12 supra.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND  
REGISTRY DOCUMENTS/(iii) Official Searches/C. OFFICIAL SEARCHES WITH PRIORITY/1114.  
Entry on day list of application for official search with priority.



### **1114. Entry on day list of application for official search with priority.**

An application for an official search with priority, however delivered<sup>1</sup>, is to be treated as having been delivered on the date and at the time of the day notice of it is entered on the day list<sup>2</sup>.

Where an application for an official search is in order, and the applicant has not withdrawn the official search<sup>3</sup>, then unless the application for an official search with priority is cancelled subsequently because it is not in order<sup>4</sup>, the entry on the day list of notice of an application for an official search with priority confers a priority period on an application for an entry in the register in respect of the protectable disposition<sup>5</sup> to which the official search relates<sup>6</sup>. The priority period is: (1) where the application for an official search is entered on the day list before the date specified as the date on which the Land Registry will be open to the public on Saturdays<sup>7</sup>, the period beginning at the time when that application is entered on the day list and ending at midnight on the thirtieth business day<sup>8</sup> thereafter; and (2) where the application for an official search is entered on the day list on or after the date so specified, the period beginning at the time when that application is entered on the day list and ending at midnight on the thirty-sixth business day thereafter<sup>9</sup>.

1 As to the method of application and the various means of delivery see PARA 1113 ante.

2 Land Registration Rules 2003, SI 2003/1417, r 148(1). As to the days when the Land Registry is open to the public under r 216 see PARA 1065 ante. As to the Land Registry see PARA 1064 et seq ante.

3 Ibid r 148(2)(a), (b).

4 Ibid r 148(4).

5 For the meaning of 'protectable disposition' see PARA 1113 note 1 ante.

6 Land Registration Rules 2003, SI 2003/1417, r 148(3). As to priority with regard to entries in the register see PARA 821 ante. As to the register of title see PARA 811 et seq ante.

7 I.e. the date referred to in ibid r 216(3) (see PARA 1065 ante): see r 131.

8 For the meaning of 'business day' see PARA 847 note 9 ante.

9 Land Registration Rules 2003, SI 2003/1417, r 131.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(iii) Official Searches/C. OFFICIAL SEARCHES WITH PRIORITY/1115. Issue of official search certificate with priority.

### **1115. Issue of official search certificate with priority.**

If an application for an official search with priority<sup>1</sup> is in order an official search certificate with priority must be issued giving the result of the search as at the date and time that the application was entered on the day list<sup>2</sup>. An official search certificate with priority relating to a registered estate<sup>3</sup> or to a pending application for first registration<sup>4</sup> may, at the Chief Land Registrar's<sup>5</sup> discretion, be issued in one or both of the following ways:

- 433 (1) in paper form<sup>6</sup>; or
- 434 (2) during the currency of any relevant notice<sup>7</sup> and subject to and in accordance with the limitations contained in that notice, by any means of communication other than post, document exchange or personal delivery<sup>8</sup>.

An official search certificate issued under heads (1) and (2) above must include such specified information<sup>9</sup> as the case may require and may be issued by reference to an official copy of the individual register<sup>10</sup> of the relevant registered title<sup>11</sup>. However, if an official search certificate is to be, or has been, issued in paper form under head (1) above, another official search certificate under head (2) above in respect of the same application need only include such specified<sup>12</sup> information as the case may require<sup>13</sup>.

- 1 As to applications for an official search with priority see PARA 1113 ante.
- 2 Land Registration Rules 2003, SI 2003/1417, r 149(1). As to entry on the day list see PARA 1114 ante.
- 3 For the meaning of 'registered estate' see PARA 861 note 3 ante.
- 4 As to first registration see PARA 826 et seq ante.
- 5 As to the Chief Land Registrar see PARA 1066 ante.
- 6 Land Registration Rules 2003, SI 2003/1417, r 149(2)(a).
- 7 Ie a notice given under ibid s 14, Sch 2: see PARA 1094 ante.
- 8 Ie under ibid r 132(2) (see PARA 1094 ante): r 149(2)(b).
- 9 Ie the information specified in ibid s 145, Sch 6 Pt 3 or Pt 4: see r 149(3).

The information specified in Sch 6 Pt 3 as information to be included in the result of an official search of an individual register of a registered title is:

- 91 (1) the title number;
- 92 (2) the date and time of the official search certificate;
- 93 (3) if the official search certificate is part of a registered title, a short description of the property or plot number on the approved estate plan;
- 94 (4) the applicant's name;
- 95 (5) the applicant's, or his agent's, reference (if any), limited to 25 characters including spaces;
- 96 (6) details of any relevant adverse entries made in the individual register since the end of the day specified in the application as the search from date;
- 97 (7) notice of the entry of any relevant pending application affecting the registered title entered on the day list (other than an application to designate a document as an exempt information document under r 136 (see PARA 1100 ante));
- 98 (8) notice of the entry of any relevant official search the priority period of which has not expired;
- 99 (9) if the official search is with priority, the date and time at which the priority expires;
- 100 (10) if the official search is without priority, a statement that the certificate will not confer on the applicant priority for any registrable disposition.

The information specified in Sch 6 Pt 4 as information to be included in the result of an official search with priority in relation to a pending application for first registration is:

- 101 (a) the title number allotted to the pending application for first registration;
- 102 (b) the date and time of the official search certificate;
- 103 (c) if the official search is of part, a short description of the property;
- 104 (d) the applicant's name;

- 105 (e) the applicant's, or his agent's, reference (if any), limited to 25 characters including spaces;
  - 106 (f) the full name of the person who has applied for first registration;
  - 107 (g) the date and time at which the pending application for first registration was entered on the day list;
  - 108 (h) notice of the entry of any relevant pending application affecting the estate sought to be registered and entered on the day list subsequent to the date and time at which the pending application for first registration was entered on the day list (other than an application to designate a document as an exempt information document under r 136 (see PARA 1100 ante));
  - 109 (i) notice of the entry of any relevant official search the priority period of which has not expired affecting the pending application for first registration;
  - 110 (j) the date and time at which priority expires.
- 10 For the meaning of 'individual register' see PARA 812 note 3 ante.
- 11 Land Registration Rules 2003, SI 2003/1417, r 149(3).
- 12 The information specified in note 9 heads (1), (6), (7) and (8) and in note 9 heads (a), (h) and (i): see *ibid* r 149(4).
- 13 *Ibid* r 149(4).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
 ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND  
 REGISTRY DOCUMENTS/(iii) Official Searches/C. OFFICIAL SEARCHES WITH PRIORITY/1116.  
 Withdrawal of official search with priority.

### **1116. Withdrawal of official search with priority.**

A person who has made an application for an official search with priority<sup>1</sup> of a registered title<sup>2</sup> or in relation to a pending first registration application<sup>3</sup> may withdraw that official search by application to the Chief Land Registrar<sup>4</sup>. However, such an application cannot be made if an application for an entry in the register<sup>5</sup> in respect of the protectable disposition<sup>6</sup> made pursuant to the official search has been made and completed<sup>7</sup>.

Once an official search has been withdrawn under these provisions, the priority period<sup>8</sup> in relation to it can no longer be conferred on an application, or if it has been conferred, it ceases to apply to the application<sup>9</sup>.

- 1 As to the method of application see PARA 1113 ante.
- 2 As to the meaning of 'registered title' see PARA 834 ante.
- 3 As to first registration see PARA 826 et seq ante.
- 4 Land Registration Rules 2003, SI 2003/1417, r 150(1). As to the Chief Land Registrar see PARA 1066 ante.
- 5 As to the register of title see PARA 811 et seq ante.
- 6 For the meaning of 'protectable disposition' see PARA 1113 note 1 ante.
- 7 Land Registration Rules 2003, SI 2003/1417, r 150(2).
- 8 For the meaning of 'priority period' see PARA 1114 ante.
- 9 Land Registration Rules 2003, SI 2003/1417, r 150(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
 ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND  
 REGISTRY DOCUMENTS/(iii) Official Searches/C. OFFICIAL SEARCHES WITH PRIORITY/1117.  
 Protection of application on which protected application is dependent.

### **1117. Protection of application on which protected application is dependent.**

Where an application for an entry in the register<sup>1</sup> (for example, for the registration of a charge) is one on which an official search certificate<sup>2</sup> confers a priority period<sup>3</sup> and there is a prior registrable disposition<sup>4</sup> (for example, a transfer) affecting the same registered land<sup>5</sup>, on which that application is dependent, then an application for an entry in the register in relation to that prior registrable disposition is for the statutory purposes<sup>6</sup> an application to which a priority period relates<sup>7</sup>. That priority period is a period expiring at the same time as the priority period conferred by the official search referred to above<sup>8</sup>. These provisions do not, however, have effect unless both the above-mentioned applications for entries in the register<sup>9</sup> are made before the end of that priority period and are in due course completed by registration<sup>10</sup>.

Similarly, where:

- 435 (1) there is a pending application for first registration<sup>11</sup>;
- 436 (2) there is a pending application for an entry in the register on which an official search confers a priority period;
- 437 (3) there is an application for registration of a prior registrable disposition affecting the same registrable estate or charge<sup>12</sup> as the pending application referred to in head (2) above;
- 438 (4) the pending application referred to in head (2) above is dependent on the application referred to in head (3) above; and
- 439 (5) the application referred to in head (3) above is subject to the pending application for first registration referred to in head (1) above<sup>13</sup>,

an application for an entry in the register in relation to the prior registrable disposition referred to in head (3) above is for the statutory purposes<sup>14</sup> an application to which a priority period relates<sup>15</sup>. That priority period is a period expiring at the same time as the priority period conferred by the official search referred to in head (2) above<sup>16</sup>. These provisions do not, however, have effect unless:

- 440 (a) the pending application for first registration referred to in head (1) above is in due course completed by registration of all or any part of the registrable estate<sup>17</sup>;
- 441 (b) both the pending application on which an official search confers priority which is referred to in head (2) above and the application relating to the prior registrable disposition which is referred to in head (3) above are made before the end of that priority period and are in due course completed by registration<sup>18</sup>.

1 As to the priority of entries in the register see PARA 821 ante; and as to the register of title see PARA 811 et seq ante.

2 As to official search certificates see PARA 1115 ante.

3 For the meaning of 'priority period' see PARA 1114 ante.

4 For the meaning of 'registrable disposition' see PARA 911 ante.

- 5 For the meaning of 'registered land' see PARA 939 note 1 ante.
- 6 le for the purposes of the Land Registration Act 2002 s 72(1)(a): see PARA 821 ante.
- 7 Land Registration Rules 2003, SI 2003/1417, r 151(1), (2).
- 8 Ibid r 151(3).
- 9 le the application referred to in ibid r 151(1) and the application referred to in r 151(2): see r 151(4).
- 10 Ibid r 151(4).
- 11 As to first registration see PARA 826 et seq ante.
- 12 For these purposes 'registrable estate or charge' means the legal estate and any charge which is sought to be registered as a registered estate or registered charge in an application for first registration: Land Registration Rules 2003, SI 2003/1417, r 131. For the meaning of 'legal estate' see PARA 823 note 2 ante; for the meaning of 'registered estate' see PARA 861 note 3 ante; and for the meaning of 'registered charge' see PARA 861 note 8 ante.
- 13 Ibid r 152(1).
- 14 See note 6 supra.
- 15 Land Registration Rules 2003, SI 2003/1417, r 152(2).
- 16 Ibid r 152(3).
- 17 Ibid r 152(4).
- 18 Ibid r 152(5).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND  
REGISTRY DOCUMENTS/(iii) Official Searches/C. OFFICIAL SEARCHES WITH PRIORITY/1118.  
Priority of concurrent applications for official searches and search certificates.

### **1118. Priority of concurrent applications for official searches and search certificates.**

Where two or more official search certificates with priority<sup>1</sup> relating to the same registrable estate or charge<sup>2</sup> or to the same registered land<sup>3</sup> have been issued and are in operation, the certificates take effect, as far as relates to the priority conferred, in the order of the times at which the applications for official search with priority were entered on the day list<sup>3</sup>, unless the applicants agree otherwise<sup>4</sup>. Where one transaction is dependent upon another the Chief Land Registrar<sup>5</sup> must assume, unless the contrary appears, that the applicants for official search with priority have agreed that their applications have priority so as to give effect to the sequence of the documents effecting the transactions<sup>6</sup>.

- 1 As to official search certificates with priority see PARA 1115 ante.
- 2 For the meaning of 'registrable estate or charge' see PARA 1117 note 12 ante.
- 3 As to entry of such applications on the day list see PARA 1114 ante.
- 4 Land Registration Rules 2003, SI 2003/1417, r 153(1).
- 5 As to the Chief Land Registrar see PARA 1066 ante.
- 6 Land Registration Rules 2003, SI 2003/1417, r 153(2).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(iii) Official Searches/C. OFFICIAL SEARCHES WITH PRIORITY/1119. Applications lodged at the same time as the priority period expires.

**1119. Applications lodged at the same time as the priority period expires.**

Where an official search with priority has been made in respect of a registered title<sup>1</sup> and an application relating to that title is taken as having been made at the same time as the expiry of the priority period<sup>2</sup> relating to that search, the time of the making of that application is to be taken as within that priority period<sup>3</sup>.

Where an official search with priority has been made in respect of a pending application for first registration<sup>4</sup> and a subsequent application relating to a registrable estate<sup>5</sup> which is subject to that pending application for first registration, or was so subject before completion of the registration of that registrable estate, is taken as having been made at the same time as the expiry of the priority period relating to that search, the time of the making of that subsequent application is to be taken as within that priority period<sup>6</sup>.

1 As to the meaning of 'registered title' see PARA 834 ante.

2 For the meaning of 'priority period' see PARA 1114 ante.

3 Land Registration Rules 2003, SI 2003/1417, r 154(1).

4 As to first registration see PARA 826 et seq ante.

5 For the meaning of 'registrable estate' see PARA 1117 note 12 ante.

6 Land Registration Rules 2003, SI 2003/1417, r 154(2).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(iii) Official Searches/D. OFFICIAL SEARCHES WITHOUT PRIORITY/1120. Application for official search without priority.

***D. OFFICIAL SEARCHES WITHOUT PRIORITY***

**1120. Application for official search without priority.**

A person may apply for an official search without priority of an individual register<sup>1</sup> of a registered title<sup>2</sup>. Such an application must (subject to delivery by electronic and other means) be made in the prescribed form<sup>3</sup>.

If such an application has been made by telephone or orally<sup>4</sup> in respect of a registered title, the Chief Land Registrar may, before or after the official search has been completed, at his discretion, inform the applicant by telephone or orally whether or not: (1) there have been any relevant adverse entries made in the individual register since the 'search from date'<sup>5</sup> given in the application; or (2) there is any relevant entry subsisting on the day list<sup>6</sup>. He need not, however, provide the applicant with details of any relevant entries<sup>7</sup>. If such an application has been made to the Land Registry computer system<sup>8</sup> from a remote terminal<sup>9</sup>, the registrar may,

before or after the official search has been completed, at his discretion, inform the applicant, by a transmission to the remote terminal, whether or not there have been any relevant entries of the kind referred to in head (1) or head (2) above<sup>10</sup>. Again, he need not provide the applicant with details of any relevant entries<sup>11</sup>.

1 For the meaning of 'individual register' see PARA 812 note 3 ante.

2 Land Registration Rules 2003, SI 2003/1417, r 155(1). As to the meaning of 'registered title' see PARA 834 ante.

3 Ibid r 155(2). This is subject to r 132(1) (see PARA 1094 ante). The prescribed form is Sch 1 Form OS3: see r 155(2). Where the application is in Sch 1 Form OS3 and an accompanying plan is required, unless the Chief Land Registrar allows otherwise, the plan must be delivered in duplicate: r 155(3). As to the use of forms generally see PARA 1087 et seq ante. As to the Chief Land Registrar see PARA 1066 ante.

4 Ie by virtue of ibid r 132(1) (see PARA 1094 ante).

5 For the meaning of 'search from date' see PARA 1113 note 10 ante.

6 Land Registration Rules 2003, SI 2003/1417, r 157(1). As to the day list see PARA 820 ante.

7 Ibid r 157(4).

8 As to the Land Registry see PARA 1064 et seq ante. As to the Land Registry network see PARA 1053 et seq ante.

9 Ie by virtue of the Land Registration Rules 2003, SI 2003/1417, r 132(1) (see PARA 1094 ante).

10 Ibid r 157(3).

11 See note 7 supra.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(iii) Official Searches/D. OFFICIAL SEARCHES WITHOUT PRIORITY/1121. Issue of official search certificate without priority.

### **1121. Issue of official search certificate without priority.**

If an application for an official search without priority<sup>1</sup> is in order, an official search certificate without priority must be issued<sup>2</sup>. Such a certificate may, at the Chief Land Registrar's<sup>3</sup> discretion, be issued in one or both of the following ways:

- 442 (1) in paper form<sup>4</sup>; or
- 443 (2) during the currency of any relevant notice<sup>5</sup> and subject to and in accordance with the limitations contained in that notice, by any means of communication other than post, document exchange or personal delivery<sup>6</sup>.

An official search certificate without priority issued under these provisions must include such specified information<sup>7</sup> as the case may require and may be issued by reference to an official copy of the individual register<sup>8</sup> of the relevant registered title<sup>9</sup>. However, if an official certificate of search is to be, or has been, issued in paper form under head (1) above, another official search certificate under head (2) above in respect of the same application need only include such specified<sup>10</sup> information as the case may require<sup>11</sup>.

1 As to an application for such an official search see PARA 1120 ante.

- 2 Land Registration Rules 2003, SI 2003/1417, r 156(1).
- 3 As to the Chief Land Registrar see PARA 1066 ante.
- 4 Land Registration Rules 2003, SI 2003/1417, r 156(2)(a).
- 5 Ie any notice given under ibid r 14, Sch 2: see PARAS 1077, 1094 ante.
- 6 Ie under ibid r 132(2) (see PARA 1094 ante): r 156(2)(b).
- 7 Ie information specified in ibid Sch 6 Pt 3: see r 156(3). As to the specified information see PARA 1115 note 9 ante.
- 8 For the meaning of 'individual register' see PARA 812 note 3 ante.
- 9 Land Registration Rules 2003, SI 2003/1417, r 156(3).
- 10 Ie the information specified in PARA 1115 note 9 heads (1), (6), (7) and (8): see ibid r 156(4).
- 11 Ibid r 156(4).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(iii) Official Searches/E. OFFICIAL SEARCHES FOR PURPOSE OF THE FAMILY LAW ACT 1996/1122. Application for official search for purpose of Family Law Act 1996 by a mortgagee.

## ***E. OFFICIAL SEARCHES FOR PURPOSE OF THE FAMILY LAW ACT 1996***

### **1122. Application for official search for purpose of Family Law Act 1996 by a mortgagee.**

A mortgagee of land<sup>1</sup> comprised in a registered title<sup>2</sup> that consists of or includes all or part of a dwelling-house may apply for an official search certificate of the result of a search of the relevant individual register<sup>3</sup> for the purpose<sup>4</sup> of determining whether there is a person on whom notice of proceedings for the enforcement of the mortgagee's security must be served under the Family Law Act 1996<sup>5</sup>. Such an application must (subject to delivery by electronic and other means) be made in the prescribed form<sup>6</sup>.

If such an application has been made the Chief Land Registrar<sup>7</sup> may, at his discretion, during the currency of a relevant notice<sup>8</sup> and in accordance with the limitations contained in that notice, before the official search has been completed, inform the applicant by any means of communication whether or not: (1) a matrimonial home rights notice<sup>9</sup> or matrimonial home rights caution<sup>10</sup> has been entered in the individual register of the relevant registered title; (2) there is a pending application for the entry of a matrimonial home rights notice entered on the day list<sup>11</sup>.

- 1 As to the meaning of 'land' see PARA 826 note 4 ante.
- 2 As to the meaning of 'registered title' see PARA 834 ante.
- 3 For the meaning of 'individual register' see PARA 812 note 3 ante.
- 4 Ie for the purpose of the Family Law Act 1996 s 56(3): see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 287.
- 5 See the Land Registration Rules 2003, SI 2003/1417, r 158(1).



6 Ibid r 158(2). This is subject to r 132(1) (see PARA 1094 ante). The prescribed form is Sch 1 Form MH3: see r 158(2). As to the use of forms generally see PARA 1087 et seq ante.

7 As to the Chief Land Registrar see PARA 1066 ante.

8 Ie a notice given under the Land Registration Rules 2003, SI 2003/1417, r 14, Sch 2: see PARA 1094 ante.

9 'Matrimonial home rights notice' means a notice registered under the Family Law Act 1996 s 31(10)(a) (as amended) or s 32, and Sch 4 para 4(3)(a) or (b), or under the Matrimonial Homes Act 1983 s 2(8) or s 5(3)(b) (repealed), or under the Matrimonial Homes Act 1967 s 2(7) or s 5(3)(b) (repealed): Land Registration Rules 2003, SI 2003/1417, r 217(1). See further MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 285 et seq.

10 'Matrimonial home rights caution' means a caution registered under the Matrimonial Homes Act 1967 before 14 February 1983: Land Registration Rules 2003, SI 2003/1417, r 217(1).

11 Ibid r 160. As to the day list see PARA 820 ante.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(3) INFORMATION AND INSPECTION OF THE REGISTERS AND REGISTRY DOCUMENTS/(iii) Official Searches/E. OFFICIAL SEARCHES FOR PURPOSE OF THE FAMILY LAW ACT 1996/1123. Issue of official search certificate following mortgagee's application for purpose of Family Law Act 1996.

### **1123. Issue of official search certificate following mortgagee's application for purpose of Family Law Act 1996.**

An official search certificate giving the result of a search in respect of an application made by a mortgagee<sup>1</sup> may, at the Chief Land Registrar's<sup>2</sup> discretion, be issued in one or both of the following ways:

444 (1) in paper form<sup>3</sup>;

445 (2) during the currency of any relevant notice<sup>4</sup> and subject to and in accordance with the limitations contained in that notice, by any means of communication other than post, document exchange or personal delivery<sup>5</sup>.

An official search certificate so issued must include the specified<sup>6</sup> information<sup>7</sup>. However, if an official search certificate is to be, or has been, issued in paper form under head (1) above, another official search certificate under head (2) above in respect of the same application need only include such specified<sup>8</sup> information as the case may require<sup>9</sup>.

1 Ie in respect of an application made under the Land Registration Rules 2003, SI 2003/1417, r 158 (see PARA 1122 ante): see r 159(1).

2 As to the Chief Land Registrar see PARA 1066 ante.

3 Land Registration Rules 2003, SI 2003/1417, r 159(1)(a).

4 Ie notice given under ibid r 14, Sch 2: see PARA 1077, 1094 ante.

5 Ie under ibid r 132(2) (see PARA 1094 ante): r 159(1)(b).

6 Ie the information specified in ibid r 145, Sch 6 Pt 5: see r 159(2). The specified information is as follows:

111 (1) the title number;

112 (2) the date and time of the official search certificate;

- 113 (3) the mortgagee's name;
- 114 (4) the mortgagee's, or his agent's, reference (if any), limited to 25 characters including spaces;
- 115 (5) whether, at the date of the official search certificate, a matrimonial home rights notice or matrimonial home rights caution has been registered against the registered title searched and if so the date of registration and the name of the person in whose favour the notice or caution was registered;
- 116 (6) whether there is a pending application for the entry of a matrimonial home rights notice entered on the day list.

For the meaning of 'matrimonial home rights notice' see PARA 1122 note 9 ante; and for the meaning of 'matrimonial home rights caution' see PARA 1122 note 10 ante. As to the day list see PARA 820 ante.

7 Ibid r 159(2).

8 le the information specified in note 6 heads (1), (5) and (6) supra: see r 159(3).

9 Ibid r 159(3).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(4) RULES, REGULATIONS AND ORDERS/(i) In general/1124.  
Subordinate legislation.

## **(4) RULES, REGULATIONS AND ORDERS**

### **(i) In general**

#### **1124. Subordinate legislation.**

There is scope for a considerable amount of subordinate legislation under the Land Registration Act 2002 and particular provisions are discussed at appropriate parts of this title. There are various instances of orders<sup>1</sup>, regulations for conduct of business<sup>2</sup> and perhaps most importantly the Land Registration Rules 2003<sup>3</sup>.

Any power of the Lord Chancellor to make rules, regulations or orders under the Land Registration Act 2002 includes power to make different provision for different cases<sup>4</sup>. Any such power of the Lord Chancellor to make rules, regulations or orders is exercisable by statutory instrument<sup>5</sup>.

A statutory instrument is to be laid before Parliament after being made where it contains:

- 446 (1) conduct of business regulations<sup>6</sup>;
- 447 (2) an order relating to conduct of business<sup>7</sup>, Land Registry fees<sup>8</sup> or adjudicator fees<sup>9</sup>.

A statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament where it contains:

- 448 (a) land registration rules<sup>10</sup>;
- 449 (b) rules on adjudication<sup>11</sup> or rules dealing with the forwarding of applications to the registrar of companies<sup>12</sup>;
- 450 (c) regulations about the carrying out of functions during any vacancy in the office of adjudicator<sup>13</sup>; or

- 451 (d) an order amending the provision on compulsory registration of title<sup>14</sup>, an order amending the number of years after which certain possessory titles may be upgraded<sup>15</sup>, an order amending the provision on compulsory registration of grants out of demesne land<sup>16</sup>, an order reducing the qualifying term specified in certain provisions<sup>17</sup> or an order in regard to applying the legislation to certain internal waters<sup>18</sup>.

Certain rules relating to simultaneous registration<sup>19</sup> or the Land Registry network<sup>20</sup> must not be made unless a draft of the rules has been laid before and approved by resolution of each House of Parliament<sup>21</sup>.

1 Eg in regard to fees under the Land Registration Act 2002 s 102 (see PARA 1071 ante).

2 Ie under *ibid* s 100 (see PARA 1069 ante).

3 Ie the Land Registration Rules 2003, SI 2003/1417, made by the Lord Chancellor under various provisions of the Land Registration Act 2002 (see PARA 1125 et seq post). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq. In its application to rentcharges, franchises, profits à prendre in gross, or manors, the Land Registration Act 2002 has effect subject to such modification as rules may provide: see s 88. See also PARAS 1035-1044 ante

4 *Ibid* s 128(1).

5 *Ibid* s 128(2).

6 *Ibid* s 128(3)(a). The reference in the text is a reference to regulations under s 100(2) (see PARA 1069 ante).

7 Ie an order under *ibid* s 100(3) (see PARA 1069 ante).

8 Ie an order under *ibid* s 102 (see PARA 1071 ante).

9 *Ibid* s 128(3)(b). The reference to an order relating to adjudicator fees is a reference to an order under s 113 (see PARA 1151 post).

10 *Ibid* s 128(4)(a). The reference is to regulations under s 126, Sch 10. See PARA 1125 et seq post.

11 Ie rules under *ibid* Pt 11 (ss 107-114) (see PARA 1146 et seq post).

12 *Ibid* s 128(4)(b). The reference to rules dealing with the forwarding of applications to the registrar of companies is a reference to rules under s 121. Section 121 provides that the Lord Chancellor may by rules make provision about the transmission by the Chief Land Registrar to the registrar of companies (within the meaning of the Companies Act 1985: see COMPANIES vol 14 (2009) PARA 131) of applications under the Companies Act 1985 Pt 12 (ss 395-424) (as amended) (registration of charges), or Pt 23 Ch 3 (ss 703A-703N) (as added and amended) (overseas companies: registration of charges). As to the Chief Land Registrar see PARA 1066 ante.

13 Land Registration Act 2002 s 128(4)(c). The regulations referred to in the text are regulations made under Sch 9 para 5 (see PARA 1149 post).

14 Ie an order under *ibid* s 5(1) (see PARA 827 ante).

15 Ie an order under *ibid* s 62(9) (see PARA 877 ante).

16 Ie an order under *ibid* s 80(4) (see PARA 884 ante).

17 Ie an order under *ibid* s 118(1) (see PARAS 826, 855, 866, 884 ante).

18 *Ibid* s 128(4)(d). The reference to an order applying legislation to internal waters is a reference to an order under s 130 (see PARA 826 ante).

19 Ie rules under *ibid* s 93 (see PARA 1052 ante).

20 Ie rules under *ibid* Sch 5 para 1, 2 or 3 (see PARAS 1054-1056 ante).

21 Ibid s 128(5).

## **UPDATE**

### **1124 Subordinate legislation**

NOTE 12--Land Registration Act 2002 s 121 substituted: SI 2009/1941.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(4) RULES, REGULATIONS AND ORDERS/(ii) Land Registration Rules/1125. Exercise and scope of land registration rule-making powers.

## **(ii) Land Registration Rules**

### **1125. Exercise and scope of land registration rule-making powers.**

With the advice and assistance of the Rule Committee<sup>1</sup> the Lord Chancellor has the power to make land registration rules<sup>2</sup>.

There are a number of miscellaneous and general land registration rule-making powers<sup>3</sup>.

1 The Rule Committee is a body consisting of: (1) a judge of the Chancery Division of the High Court nominated by the Lord Chancellor; (2) the Chief Land Registrar; (3) a person nominated by the General Council of the Bar; (4) a person nominated by the Council of the Law Society; (5) a person nominated by the Council of Mortgage Lenders; (6) a person nominated by the Council of Licensed Conveyancers; (7) a person nominated by the Royal Institution of Chartered Surveyors; (8) a person with experience in, and knowledge of, consumer affairs; and (9) any person nominated under the Land Registration Act 2002 s 127(3): s 127(2). The Lord Chancellor may nominate to be a member of the Rule Committee any person who appears to him to have qualifications or experience which would be of value to the committee in considering any matter with which it is concerned: s 127(3). As to the High Court generally see COURTS. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq. As to the Chief Land Registrar see PARA 1066 ante. As to the General Council of the Bar see LEGAL PROFESSIONS vol 66 (2009) PARA 1042 et seq. As to the Council of the Law Society see LEGAL PROFESSIONS vol 65 (2008) PARA 609 et seq. As to the Council of Licensed Conveyancers see LEGAL PROFESSIONS vol 66 (2009) PARA 1319. As to the Royal Institution of Chartered Surveyors see BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS vol 4(3) (Reissue) PARA 284.

2 Ibid s 127(1). 'Land registration rules' means any rules under the Land Registration Act 2002 other than rules under s 93 (simultaneous registration) (see PARA 1052 ante), Pt 11 (ss 107-114) (adjudication) (see PARA 1146 et seq post), s 121 (forwarding applications to registrar of companies) (see PARA 1124 note 12 ante), Sch 5 para 1, 2 or 3 (access to Land Registry network) (see PARAS 1054-1056 ante): s 132(1). In exercise of this power the Lord Chancellor has made the Land Registration Rules 2002, SI 2003/1417.

3 See the Land Registration Act 2002 s 126, Sch 10; and PARA 1126 et seq post.

## **UPDATE**

### **1125 Exercise and scope of land registration rule-making powers**

NOTE 1--Land Registration Act 2002 s 127(2) amended: Constitutional Reform Act 2005 Sch 4 para 302.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(4) RULES, REGULATIONS AND ORDERS/(ii) Land Registration Rules/1126. Dealings with estates subject to compulsory first registration.

### **1126. Dealings with estates subject to compulsory first registration.**

Land registration rules<sup>1</sup> may make provision:

- 452 (1) applying the Land Registration Act 2002 to a pre-registration dealing<sup>2</sup> with a registrable legal estate<sup>3</sup> as if the dealing had taken place after the date of first registration of the estate<sup>4</sup>; and
- 453 (2) about the date on which registration of the dealing is effective<sup>5</sup>.

1 As to the making of land registration rules generally see PARA 1125 ante.

2 A pre-registration dealing is one which takes place before the making of an application under the Land Registration Act 2002 s 6 (duty to apply for registration of title) (see PARA 828 ante): s 126, Sch 10 para 1(2)(a).

3 A legal estate is registrable if a person is subject to a duty under *ibid* s 6 (see PARA 828 ante) to make an application to be registered as the proprietor of it: Sch 10 para 1(2)(b). For the meaning of 'legal estate' see PARA 823 note 2 ante.

4 *Ibid* Sch 10 para 1(1)(a). As to first registration see PARA 826 et seq ante.

5 *Ibid* Sch 10 para 1(1)(b).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(4) RULES, REGULATIONS AND ORDERS/(ii) Land Registration Rules/1127. Regulation of title matters between sellers and buyers.

### **1127. Regulation of title matters between sellers and buyers.**

Land registration rules<sup>1</sup> may make provision about the obligations with respect to:

- 454 (1) proof of title; or
- 455 (2) perfection of title,

of the seller under a contract for the transfer, or other disposition, for valuable consideration<sup>2</sup> of a registered estate<sup>3</sup> or charge<sup>4</sup>.

Such rules may be expressed to have effect notwithstanding any stipulation to the contrary<sup>5</sup>.

1 As to the making of land registration rules generally see PARA 1125 ante.

2 As to the meaning of 'valuable consideration' see PARA 827 note 7 ante.

3 For the meaning of 'registered estate' see PARA 861 note 3 ante.

4 Land Registration Act 2002 s 126, Sch 10 para 2(1). For the meaning of 'registered charge' see PARA 861 note 8 ante. As to proof and perfection of title see PARA 964 et seq ante.

5 *Ibid* Sch 10 para 2(2).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(4) RULES, REGULATIONS AND ORDERS/(ii) Land Registration Rules/1128. Implied covenants.

### **1128. Implied covenants.**

Land registration rules<sup>1</sup> may:

- 456 (1) make provision about the form of provisions extending or limiting any covenant implied by virtue of Part I of the Law of Property (Miscellaneous Provisions) Act 1994<sup>2</sup> on a registrable disposition<sup>3</sup>;
- 457 (2) make provision about the application of the provision of the Law of Property Act 1925 dealing with implied covenants in conveyances subject to rents<sup>4</sup> to transfers of registered estates<sup>5</sup>;
- 458 (3) make provision about reference in the register<sup>6</sup> to implied covenants, including provision for the state of the register to be conclusive in relation to whether covenants have been implied<sup>7</sup>.

1 As to the making of land registration rules generally see PARA 1125 ante.

2 I.e. the provisions of the Law of Property (Miscellaneous Provisions) Act 1994 Pt I (ss 1-13) (as amended) (implied covenants for title): see SALE OF LAND vol 42 (Reissue) PARA 349 et seq.

3 Land Registration Act 2002 s 126, Sch 10 para 3(a). See the Land Registration Rules 2003, SI 2003/1417, r 67; and PARAS 969, 972 ante.

4 I.e. the Law of Property Act 1925 s 77 (as amended): see RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 776.

5 Land Registration Act 2002 Sch 10 para 3(b). See the Land Registration Rules 2003, SI 2003/1417, r 69; and PARA 975 ante.

6 As to the register of title see PARA 811 et seq ante.

7 Land Registration Act 2002 Sch 10 para 3(c). See the Land Registration Rules 2003, SI 2003/1417, r 67; and PARA 971 ante.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(4) RULES, REGULATIONS AND ORDERS/(ii) Land Registration Rules/1129. Land certificates.

### **1129. Land certificates.**

Land registration rules<sup>1</sup> may make provision about:

- 459 (1) when a certificate of registration of title<sup>2</sup> to a legal estate may be issued<sup>3</sup>;
- 460 (2) the form and content of such a certificate<sup>4</sup>; and
- 461 (3) when such a certificate must be produced or surrendered to the Chief Land Registrar<sup>5</sup>.

However, it is clear that land and charge certificates will no longer be issued although official copies of the register<sup>6</sup> and of the title plan<sup>7</sup> will be available as will a 'title information document' explaining why the official copy has been issued and how to obtain further copies<sup>8</sup>.

- 1 As to the making of land registration rules generally see PARA 1125 ante.
- 2 As to first registration see PARA 826 et seq ante. As to the effect of registration see PARA 859 et seq ante.
- 3 Land Registration Act 2002 s 126, Sch 10 para 4(a).
- 4 Ibid Sch 10 para 4(b).
- 5 Ibid Sch 10 para 4(c). As to the Chief Land Registrar see PARA 1066 ante.
- 6 As to the register of title see PARA 811 et seq ante.
- 7 As to the title plan see PARA 814 ante.
- 8 See Land Registry Practice Bulletins 1, 2 (March 2003).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(4) RULES, REGULATIONS AND ORDERS/(ii) Land Registration Rules/1130. Notice.

### **1130. Notice.**

Land registration rules<sup>1</sup> may make provision about the form, content and service of notice under the Land Registration Act 2002<sup>2</sup>.

Rules about the service of notice may, in particular:

- 462 (1) make provision requiring the supply of an address for service and about the entry of addresses for service in the register<sup>3</sup>;
- 463 (2) make provision about the time for service, the mode of service and when service is to be regarded as having taken place<sup>4</sup>.

Every notice given by the Chief Land Registrar<sup>5</sup> must: (a) fix the time<sup>6</sup> within which the recipient is to take any action required by the notice; (b) state what the consequence will be of a failure to take such action as is required by the notice within the time fixed; (c) state the manner in which any reply to the notice must be given and the address to which it must be sent<sup>7</sup>.

A person who is (or will as a result of an application be) on a list of specified persons<sup>8</sup> must give the registrar an address for service to which all notices and other communications to him by the registrar may be sent<sup>9</sup>. Such address must be a postal address, whether or not in the United Kingdom<sup>10</sup>. The person referred to above may give the registrar one or two additional addresses for service, provided that he may not have more than three addresses for service, and the address or addresses must be a postal address (whether or not in the United Kingdom)<sup>11</sup>, or a box number at a United Kingdom document exchange<sup>12</sup>, or an electronic address<sup>13</sup>. Subject to the above<sup>14</sup> such person may give the registrar a replacement address for service<sup>15</sup>.

A cautioner who is entered in the register of title<sup>16</sup> in respect of a caution against dealings under the previous legislation<sup>17</sup> may give the registrar a replacement or additional address for service provided that he may not have more than three addresses for service<sup>18</sup>, one of his addresses for service must be a postal address (whether or not in the United Kingdom)<sup>19</sup>, and all of his addresses for service must be a postal address (whether or not in the United Kingdom), a box number at a United Kingdom document exchange, or an electronic address<sup>20</sup>.

All notices which the registrar is required to give may be served:

- 464 (i) by post<sup>21</sup>, to any postal address in the United Kingdom entered in the register as an address for service<sup>22</sup>;
- 465 (ii) by post, to any postal address outside the United Kingdom entered in the register as an address for service<sup>23</sup>;
- 466 (iii) by leaving the notice at any postal address in the United Kingdom entered in the register as an address for service<sup>24</sup>;
- 467 (iv) by directing the notice to the relevant box number at any document exchange entered in the register as an address for service<sup>25</sup>;
- 468 (v) by electronic transmission to the electronic address entered in the register as an address for service<sup>26</sup>;
- 469 (vi) by fax<sup>27</sup>; or
- 470 (vii) by any of the methods of service given in heads (i), (ii), (iii) and (iv) above to any other address where the registrar believes the addressee is likely to receive it<sup>28</sup>.

Service of a notice which is served in accordance with the above provisions is regarded as having taken place for each method of service at the times shown below<sup>29</sup>:

- 471 (A) post to an address in the United Kingdom, on the second working day after posting;
- 472 (B) leaving at a postal address, on the working day after it was left;
- 473 (C) post to an address outside the United Kingdom, on the seventh working day after posting;
- 474 (D) document exchange, on the second working day after it was left at the registrar's document exchange;
- 475 (E) fax, on the working day after transmission;
- 476 (F) electronic transmission to an electronic address, on the second working day after transmission<sup>30</sup>.

1 As to the making of land registration rules generally see PARA 1125 ante.

2 Land Registration Act 2002 s 126, Sch 10 para 5(1). See the Land Registration Rules 2003, SI 2003/1417, rr 197-199.

3 Land Registration Act 2002 Sch 10 para 5(2)(a). As to the register see PARA 811 et seq ante.

4 Ibid Sch 10 para 5(2)(b).

5 As to the Chief Land Registrar see PARA 1066 ante.

6 Except where otherwise provided by the Land Registration Rules 2003, SI 2003/1417, the time fixed by the notice is the period ending at 12 noon on the fifteenth business day after the date of issue of the notice: r 197(2). For the meaning of 'business day' see PARA 847 note 9 ante. As to the substituted period where there has been a notice under r 216(2) see PARA 1065 ante.

7 Ibid r 197(1).

8 The persons referred to in ibid r 197(1) are:

117 (1) the registered proprietor of a registered estate or registered charge (r 198(2)(a));

118 (2) the registered beneficiary of a unilateral notice (r 198(2)(b));

119 (3) a cautioner named in an individual caution register (r 198(2)(c));

120 (4) a person whose name and address is required to be included in a standard restriction set out in Sch 4 or whose consent or certificate is required, or upon whom notice is required to be served by the registrar or another person, under any other restriction (r 198(2)(d));

121 (5) a person entitled to be notified of an application for adverse possession under r 194 (r 198(2)(e));



- 122 (6) a person who objects to an application under the Land Registration Act 2002 s 73 (see PARAS 1004, 1081 ante) (Land Registration Rules 2003, SI 2003/1417, r 198(2)(f));
- 123 (7) a person who gives notice to the registrar under the Land Registration Act 2002 Sch 6 para 3(2) (see PARA 1029 ante) (Land Registration Rules 2003, SI 2003/1417, r 198(2)(g)); and
- 124 (8) any person who while dealing with the registrar in connection with registered land or a caution against first registration is requested by the registrar to give an address for service (r 198(2)(h)).

A person within r 198(2)(d) (see head (4) supra) is treated as having complied with any duty imposed on him under r 198(1) where r 198(2)(b) (see head (2) supra) has been complied with: r 198(11). For the meanings of 'registered estate' and 'registered charge' see PARA 861 ante. For the meaning of 'unilateral notice' see PARA 1004 note 2 ante. For the meaning of 'individual caution register' see PARA 851 note 1 ante. As to restrictions see PARA 1005 et seq ante. As to adverse possession see PARA 1021 et seq ante.

9 Ibid r 198(1). See also r 198(3)-(5); and the text to notes 10-15 infra.

10 Ibid r 198(3). For the meaning of 'United Kingdom' see PARA 826 note 4 ante.

11 Ibid r 198(4)(a).

12 Ibid r 198(4)(b). However, the box number referred to must be at a United Kingdom document exchange to which delivery can be made on behalf of the Land Registry under arrangements already in existence between the Land Registry and a service provider at the time the box number details are provided to the registrar under r 198: r 198(7). As to the Land Registry see PARA 1064 et seq ante.

13 Ibid r 198(4)(c). For the purposes of r 198, an 'electronic address' means: (1) an email address; or (2) any other form of electronic address specified in a direction under r 198(9): r 198(8). If the registrar is satisfied that a form of electronic address, other than an email address, is a suitable form of address for service he may issue a direction to that effect: r 198(9). A direction under r 198(9) may contain such conditions or limitations or both as the registrar considers appropriate: r 198(10).

14 Ie subject to ibid r 198(3), (4) (see the text and notes 10-13 supra).

15 Ibid r 198(5).

16 As to the register of title see PARA 811 et seq ante.

17 Ie under the Land Registration Act 1925 s 54 (repealed): see the Land Registration Rules 2003, SI 2003/1417, r 198(6).

18 Ibid r 198(6)(a).

19 Ibid r 198(6)(b).

20 Ibid r 198(4), (6)(c).

21 For the purposes of ibid r 198, 'post' means pre-paid delivery by a postal service which seeks to deliver documents within the United Kingdom no later than the next working day in all or the majority of cases, and to deliver outside the United Kingdom within such a period as is reasonable in all the circumstances: r 198(5). For the purposes of r 198(4), (5), 'working day' means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or any other day either specified or declared by proclamation under the Banking and Financial Dealings Act 1971 s 1 (see TIME vol 97 (2010) PARA 321) or appointed by the Lord Chancellor: Land Registration Rules 2003, SI 2003/1417, r 198(6). As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

22 Ibid r 199(1)(a). In r 199(1), references to an address or box number 'entered in the register as an address for service' include an address for service given under r 198(2)(h) (see note 8 supra), whether or not it is entered in the register: r 199(2).

23 Ibid r 199(1)(b).

24 Ibid r 199(1)(c).

25 Ibid r 199(1)(d).

26 Ibid r 199(1)(e).

27 Ibid r 199(1)(f). However, the notice may be served by fax if the recipient has informed the registrar in writing: (1) that the recipient is willing to accept service of the notice by fax; and (2) of the fax number to which it should be sent: r 199(3).

28 Ibid r 199(1)(g).

29 See ibid r 199(4).

30 See ibid r 199(4), table.

## UPDATE

### 1130 Notice

TEXT AND NOTES 8-20--SI 2003/1417 r 198(6A) added: SI 2008/1919.

NOTE 8--Now head (4) a person named in (a) a standard form of restriction set out in SI 2003/1417 Sch 4, whose address is required by that restriction, or (b) any other restriction, whose consent or certificate is required, or to whom notice is required to be given by the registrar or another person, except where the registrar is required to enter the restriction without application: r 198(2)(d) (substituted by SI 2005/1766).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(4) RULES, REGULATIONS AND ORDERS/(ii) Land Registration Rules/1131. Applications.

### 1131. Applications.

Land registration rules<sup>1</sup> may:

- 477 (1) make provision about the form and content of applications under the Land Registration Act 2002<sup>2</sup>;
- 478 (2) make provision requiring applications under the Act to be supported by such evidence as the rules may provide<sup>3</sup>;
- 479 (3) make provision about when an application under the Act is to be taken as made<sup>4</sup>;
- 480 (4) make provision about the order in which competing applications are to be taken to rank<sup>5</sup>;
- 481 (5) make provision for an alteration made by the Chief Land Registrar<sup>6</sup> for the purpose of correcting a mistake in an application or accompanying document to have effect in such circumstances as the rules may provide as if made by the applicant or other interested party or parties<sup>7</sup>.

1 As to the making of land registration rules generally see PARA 1125 ante. As to general provisions regarding applications for registration see PARA 1075 et seq ante.

2 Land Registration Act 2002 s 126, Sch 10 para 6(a). Note that this will in time include applications in electronic form (see the Land Registration Rules 2003, SI 2003/1417, r 14; and PARAS 1077, 1094 ante). As to outline applications see r 54; and PARA 930 ante.

3 Land Registration Act 2002 Sch 10 para 6(b).

4 Ibid Sch 10 para 6(c).

5 Ibid Sch 10 para 6(d).

6 As to the Chief Land Registrar see PARA 1066 ante.

7 Land Registration Act 2002 Sch 10 para 6(e).

## **UPDATE**

### **1131 Applications**

TEXT AND NOTES--See the Land Registration (Electronic Conveyancing) Rules 2008, SI 2008/1750.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(4) RULES, REGULATIONS AND ORDERS/(ii) Land Registration Rules/1132. Statutory statements.

### **1132. Statutory statements.**

Land registration rules<sup>1</sup> may make provision about the form of any statement required under an enactment to be included in an instrument effecting a registrable disposition<sup>2</sup> or a disposition which triggers the requirement of registration<sup>3</sup>.

1 As to the making of land registration rules generally see PARA 1125 ante.

2 For the meaning of 'registrable disposition' see PARA 911 ante.

3 Land Registration Act 2002 s 126, Sch 10 para 7. As to dispositions of registered land see PARA 906 et seq ante.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7. ADMINISTRATION AND OFFENCES/(4) RULES, REGULATIONS AND ORDERS/(ii) Land Registration Rules/1133. Residual power.

### **1133. Residual power.**

Land registration rules<sup>1</sup> may make any other provision which it is expedient to make for the purposes of carrying the Land Registration Act 2002 into effect, whether similar or not to any provision which may be made under the other powers to make such registration rules<sup>2</sup>.

1 As to the making of land registration rules generally see PARA 1125 ante.

2 Land Registration Act 2002 s 126, Sch 10 para 8. As to other powers to make land registration rules see PARA 1126 et seq ante.

## **UPDATE**

### **1133 Residual power**

TEXT AND NOTES--See the Land Registration (Electronic Conveyancing) Rules 2008, SI 2008/1750.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(5) OFFENCES/1134. Introduction.

## **(5) OFFENCES**

### **1134. Introduction.**

With the Land Registration Act 2002 there is little change in the offences relevant to land registration<sup>1</sup>. The Act creates new offences to replace similar offences under the Land Registration Act 1925, which relate to suppression of information and improper alteration of the registers<sup>2</sup>.

<sup>1</sup> There is still the offence of an unqualified person acting for reward under the Solicitors Act 1974 s 22(1) (as amended): see PARA 1135 post.

<sup>2</sup> See the Land Registration Act 2002 s 123 (see PARA 1136 post) and s 124 (see PARA 1137 post). Section 125 (see PARA 1138 post) replicates the Land Registration Act 1925 by including a provision on the extent of the privilege against self-incrimination.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(5) OFFENCES/1135. Unqualified persons acting for reward.

### **1135. Unqualified persons acting for reward.**

Any unqualified person who, directly or indirectly, draws or prepares<sup>1</sup> any instrument of transfer or charge for the purposes of the Land Registration Act 2002, or makes any application or lodges any document for registration<sup>2</sup> under that Act at the Land Registry<sup>3</sup> is, unless he proves that the act was not done for or in expectation of any fee, gain or reward<sup>4</sup>, guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale<sup>5</sup>.

<sup>1</sup> See *Green v Hoyle* [1976] 2 All ER 633, [1976] 1 WLR 575, DC.

<sup>2</sup> An application for an official search (see PARA 1110 et seq ante) or an office copy of the entries on the register (see PARA 1095 et seq post) is not an application for registration and this offence does not extend to such applications: see *Carter v Butcher* [1966] 1 QB 526, [1965] 1 All ER 994, DC.

<sup>3</sup> As to the Land Registry see PARA 1064 et seq ante.

<sup>4</sup> See *Beeston and Stapleford UDC v Smith* [1949] 1 KB 656, [1949] 1 All ER 394, DC; applied in *Reynolds v Hoyle* [1975] 3 All ER 934, [1976] 1 WLR 207, DC.

<sup>5</sup> See the Solicitors Act 1974 s 22(1) (amended by the Criminal Justice Act 1982 ss 38, 46; the Administration of Justice Act 1985 s 6(1), (2); and the Land Registration Act 2002 s 133, Sch 11 para 12(1), (2)); and LEGAL PROFESSIONS vol 65 (2008) PARA 595. 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justices Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Powers of Criminal Courts (Sentencing) Act 2000 s 128 (as amended; prospectively repealed); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144. The Solicitors Act 1974 s 22(2) (as amended) sets out exclusions for s 22(1) (as amended) which include a barrister or duly certificated notary public, any public

officer drawing or preparing instruments or applications in the course of his duty; and any person employed merely to engross any instrument, application or proceeding. Section 22(2A) (as added) excludes from s 22(1) (as amended) any act done by a person at the direction and under the supervision of another person if that other person was at the time his employer, a partner of his employer or a fellow employee, and if the act could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence under s 22 (as amended) (see LEGAL PROFESSIONS vol 65 (2008) PARA 595 et seq).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(5) OFFENCES/1136. Suppression of information.

### **1136. Suppression of information.**

A person commits an offence if in the course of proceedings relating to registration<sup>1</sup> under the Land Registration Act 2002 he suppresses information with the intention of:

- 482 (1) concealing a person's right or claim<sup>2</sup>; or
- 483 (2) substantiating a false claim<sup>3</sup>.

A person guilty of such an offence is liable: (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine<sup>4</sup>; (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum<sup>5</sup>, or to both<sup>6</sup>.

1 As to registration see PARA 826 et seq ante.

2 Land Registration Act 2002 s 123(1)(a).

3 Ibid s 123(1)(b).

4 Ibid s 123(2)(a).

5 The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140. 'Prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1) (as substituted): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 141.

6 Land Registration Act 2002 s 123(2)(b).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(5) OFFENCES/1137. Improper alterations of the register.

### **1137. Improper alterations of the register.**

A person commits an offence if he dishonestly induces another:

- 484 (1) to change<sup>1</sup> the register of title or cautions register<sup>2</sup>; or
- 485 (2) to authorise the making of such a change<sup>3</sup>.

A person commits an offence if he intentionally or recklessly makes an unauthorised change in the register of title or cautions register<sup>4</sup>.

A person guilty of such an offence is liable: (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine<sup>5</sup>; (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum<sup>6</sup>, or to both<sup>7</sup>.

- 1 In the Land Registration Act 2002 s 124, references to changing the register of title include changing a document referred to in it: s 124(4). As to the register of title see PARA 811 et seq ante.
- 2 Ibid s 124(1)(a). As to the cautions register see PARA 849 et seq ante.
- 3 Ibid s 124(1)(b).
- 4 Ibid s 124(2).
- 5 Ibid s 124(3)(a).
- 6 As to the statutory maximum see PARA 1136 note 5 ante.
- 7 Land Registration Act 2002 s 124(3)(b).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(5) OFFENCES/1138. Privilege against self-incrimination.

### **1138. Privilege against self-incrimination.**

The privilege against self-incrimination, so far as relating to offences under the Land Registration Act 2002<sup>1</sup>, does not entitle a person to refuse to answer any question or produce any document or thing in any legal proceedings other than criminal proceedings<sup>2</sup>.

However, no evidence thus obtained<sup>3</sup> is admissible in any criminal proceedings under the Act against the person from whom it was obtained or that person's spouse<sup>4</sup>.

- 1 As to offences under the Land Registration Act 2002 see PARAS 1136-1137 ante.
- 2 Ibid s 125(1).
- 3 Ie obtained under ibid s 125(1).
- 4 Ibid s 125(2).

### **UPDATE**

### **1138 Privilege against self-incrimination**

TEXT AND NOTE 4--In 2002 Act s 125(2) after 'spouse' add 'or civil partner': Civil Partnership Act 2004 Sch 27 para 167.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(6) ANCILLARY MATTERS/1139. Stamp duty and stamp duty land tax.

## **(6) ANCILLARY MATTERS**

### **1139. Stamp duty and stamp duty land tax.**

Stamp duty is chargeable<sup>1</sup> only on instruments relating to stock and marketable securities and the Finance Act 1895<sup>2</sup> does not apply to property other than stock or marketable securities<sup>3</sup>. From 1 December 2003, as a result of the Finance Act 2003<sup>4</sup>, land transactions<sup>5</sup> are instead subject to stamp duty land tax<sup>6</sup>. A land transaction is a chargeable transaction if it is not an exempt transaction, and the tax is levied on the chargeable consideration<sup>7</sup>. The tax applies however the acquisition is effected and whether or not there is an instrument effecting the transaction, and (if there is such an instrument) whether or not it is executed in the United Kingdom and whether or not any party to the transaction is present, or resident, in the United Kingdom<sup>8</sup>.

There is a duty, in the case of every notifiable transaction, for the purchaser to deliver a land transaction return to the Inland Revenue before the end of the period of 30 days beginning with the effective date of the transaction<sup>9</sup>. A land transaction or, as the case may be, a document effecting or evidencing such a transaction, may not be registered, recorded or otherwise reflected in the register of title<sup>10</sup> maintained by the Chief Land Registrar<sup>11</sup> unless there is produced, together with the relevant application, a certificate as to compliance with stamp duty land tax requirements<sup>12</sup> in relation to the transaction<sup>13</sup>.

There are other provisions in the Finance Act 2003 dealing with contracts, conveyances, leases, the amount of tax chargeable, reliefs, collection and recovery of the tax, information powers, records, determination and assessments, offences and penalties, appeals, special cases and regulations<sup>14</sup>.

1    Ie chargeable under the Finance Act 1999 s 112(3), Sch 13 (as amended) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX).

2    Ie the Finance Act 1895 s 12 (as amended) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX).

3    Finance Act 2003 s 125 (amended by the Stamp Duty and Stamp Duty Land Tax (Variation of the Finance Act 2003 (No 2) Regulations 2003, SI 2003/2816). The Finance Act 2003 s 125 (as amended) is to be construed as one with the Stamp Act 1891: Finance Act 2003 s 125(3) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX).

4    Ie subject to transitional provisions: see *ibid* s 124, Sch 19 (as amended); the Stamp Duty Land Tax (Appointment of the Implementation Date) Order 2003, SI 2003/2899; and STAMP DUTIES AND STAMP DUTY RESERVE TAX.

5    Ie any acquisition of a chargeable interest: see the Finance Act 2003 ss 42(1), 43(1), (2). For the meanings of 'acquisition' and 'chargeable interest' see STAMP DUTIES AND STAMP DUTY RESERVE TAX.

6    In the enactments relating to stamp duty, references to 'conveyance or transfer' are now to be read as references to 'transfer': see *ibid* s 125, Sch 20 para 3; and STAMP DUTIES AND STAMP DUTY RESERVE TAX.

7    See *ibid* s 49(1). In general terms, the chargeable consideration is any consideration in money or money's worth given for the subject matter of the transaction, directly or indirectly, by the purchaser or a person connected with him (see s 50(1), Sch 4 para 1) and is taken to include any value added tax chargeable in respect of the transaction (see Sch 4 para 2). See further STAMP DUTIES AND STAMP DUTY RESERVE TAX.

8    See *ibid* ss 42(2), 43(2); and STAMP DUTIES AND STAMP DUTY RESERVE TAX. For the meaning of 'United Kingdom' see PARA 826 note 4 ante.

9    See *ibid* s 76(1); and STAMP DUTIES AND STAMP DUTY RESERVE TAX. The purchaser is liable to pay the tax in respect of a chargeable transaction; and tax payable in respect of a land transaction must be paid at the same time that a land transaction return is made: see ss 85(1), 86(1); and STAMP DUTIES AND STAMP DUTY RESERVE TAX.

10   As to the register of title see PARA 811 et seq ante.

11   As to the Chief Land Registrar see PARA 1066 post.

12   Ie the requirements of the Finance Act 2003 Pt 4 (ss 42-124): see STAMP DUTIES AND STAMP DUTY RESERVE TAX.

13 See *ibid* s 79(1). The certificate must be either a certificate by the Inland Revenue (a 'Revenue certificate') that a land transaction return has been delivered in respect of the transaction, or a certificate by the purchaser (a 'self-certificate') that no land transaction return is required in respect of the transaction. As to such certificates see STAMP DUTIES AND STAMP DUTY RESERVE TAX.

14 See the Finance Act 2003; and STAMP DUTIES AND STAMP DUTY RESERVE TAX.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(6) ANCILLARY MATTERS/1140. Solicitors' remuneration.

#### **1140. Solicitors' remuneration.**

The remuneration of solicitors for conveyancing and other non-contentious business in connection with registered land<sup>1</sup> is prescribed and regulated by general order<sup>2</sup>, made by a statutory committee<sup>3</sup>. The Chief Land Registrar<sup>4</sup> is a member of the committee for the purpose only of prescribing and regulating solicitors' remuneration in respect of business under the Land Registration Act 2002<sup>5</sup>.

1 As to the meaning of 'land' see PARA 826 note 4 ante.

2 See the Solicitors (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616 (amended by SI 1972/1139); and LEGAL PROFESSIONS vol 66 (2009) PARA 936 et seq.

3 See the Solicitors Act 1974 s 56(2) (as amended); and LEGAL PROFESSIONS vol 66 (2009) PARA 936.

4 As to the Chief Land Registrar see PARA 1066 ante.

5 Solicitors Act 1974 s 56(1)(f) (amended by the Land Registration Act 2002 s 133, Sch 11 para 12(1), (2)).

#### **UPDATE**

#### **1140 Solicitors' remuneration**

NOTE 2--SI 1994/2616 replaced: Solicitors' (Non-Contentious Business) Remuneration Order 2009, SI 2009/1931.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(6) ANCILLARY MATTERS/1141. Conveyancers.

#### **1141. Conveyancers.**

It should be noted that any reference in the Land Registration Rules 2003<sup>1</sup> to a 'conveyancer' means a solicitor<sup>2</sup>, a licensed conveyancer<sup>3</sup>, or a fellow of the Institute of Legal Executives<sup>4</sup>.

1 *Ie* the Land Registration Rules 2003, SI 2003/1417.

2 As to solicitors see LEGAL PROFESSIONS vol 65 (2008) PARA 600.

3 *Ie* within the meaning of the Administration of Justice Act 1985 s 11(2) (see LEGAL PROFESSIONS vol 66 (2009) PARA 1319).

4 See the Land Registration Rules 2003, SI 2003/1417, r 217(1); and PARA 832 note 4 ante. As to the Institute of Legal Executives see LEGAL PROFESSIONS vol 66 (2009) PARA 1463 et seq.



Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/7.  
ADMINISTRATION AND OFFENCES/(6) ANCILLARY MATTERS/1142. Powers of attorney.

## 1142. Powers of attorney.

If any document executed by an attorney<sup>1</sup> is delivered to the Land Registry<sup>2</sup>, there must be produced to the Chief Land Registrar<sup>3</sup>: (1) the instrument creating the power<sup>4</sup>; or (2) a copy of the power by means of which its contents may be proved<sup>5</sup>; or (3) a document which under the relevant statutory provisions<sup>6</sup> is sufficient evidence of the contents of the power<sup>7</sup>; or (4) a certificate by a conveyancer<sup>8</sup> in the prescribed form<sup>9</sup>.

If any transaction between a donee of a power of attorney and the person dealing with him is not completed within 12 months of the date on which the power came into operation, the registrar may require the production of evidence to satisfy him that the power had not been revoked at the time of the transaction<sup>10</sup>.

If any document executed by an attorney to whom functions have been delegated under the power to delegate functions to a beneficiary interested in a trust of land<sup>11</sup> is delivered to the registrar, the registrar may require the production of evidence to satisfy him that the person who dealt with the attorney: (a) did so in good faith<sup>12</sup>; and (b) had no knowledge at the time of the completion of the transaction that the attorney was not a person to whom the functions of the trustees in relation to the land to which the application relates could be delegated under that power<sup>13</sup>.

1 As to powers of attorney generally see AGENCY. As to trustees' powers of attorney see the Trustee Act 1925 s 25 (as substituted); and TRUSTS vol 48 (2007 Reissue) PARA 984.

2 As to the Land Registry see PARA 1064 et seq ante.

3 As to the Chief Land Registrar see PARA 1066 ante.

4 Land Registration Rules 2003, SI 2003/1417, r 61(1)(a). For these purposes 'power' means the power of attorney: r 61(3).

5 Ibid r 61(1)(b). As to proving the contents see the Powers of Attorney Act 1971 s 3 (as amended); and AGENCY vol 1 (2008) PARA 17.

6 Ie under the Evidence and Powers of Attorney Act 1940 s 4 (as amended) (see AGENCY vol 1 (2008) PARA 17) or under the Enduring Powers of Attorney Act 1985 s 7(3) (repealed): see the Land Registration Rules 2003, SI 2003/1417, r 61(1)(c).

7 Ibid r 61(1)(c). If an order under the Enduring Powers of Attorney Act 1985 s 8 (see AGENCY vol 1 (2008) PARA 52) has been made with respect to a power or the donor of the power or the attorney appointed under it, the order must be produced to the registrar: Land Registration Rules 2003, SI 2003/1417, r 61(2).

8 For the meaning of 'conveyancer' see PARA 832 note 4 ante. See also PARA 1141 ante.

9 Land Registration Rules 2003, SI 2003/1417, r 61(1)(d). The prescribed form is Sch 1 Form 1. As to the use of forms generally see PARA 1087 et seq ante.

10 Ibid r 62(1). The evidence that the registrar may require under r 62(1) may consist of or include a statutory declaration by the person who dealt with the attorney or a certificate given by that person's conveyancer in the form prescribed in Sch 1 Form 2: r 62(2). As to statutory declarations see CIVIL PROCEDURE vol 11 (2009) PARA 1024.

11 Ie under the Trusts of Land and Appointment of Trustees Act 1996 s 9 (as amended) (see TRUSTS vol 48 (2007 Reissue) PARA 987).

12 Land Registration Rules 2003, SI 2003/1417, r 63(1)(a).

13 Ibid r 63(1)(b). The evidence that the registrar may require under r 63(1) may consist of or include a statutory declaration by the person who dealt with the attorney or a certificate given by that person's conveyancer either in Sch 1 Form 3 or, where evidence of non-revocation is also required pursuant to r 62, in Sch 1 Form 2: r 63(2).

## **UPDATE**

### **1142 Powers of attorney**

TEXT AND NOTES 6, 7--SI 2003/1417 r 61(1)(c), (2) substituted: SI 2007/1898.

NOTE 10--SI 2003/1417 r 62(2) amended: SI 2008/1919.

NOTE 13--SI 2003/1417 r 63(2) amended: SI 2008/1919.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(1) PROCEEDINGS BEFORE THE REGISTRAR/1143. Use of specialist assistance by the Chief Land Registrar.

## **8. PROCEEDINGS AND ADJUDICATION**

### **(1) PROCEEDINGS BEFORE THE REGISTRAR**

#### **1143. Use of specialist assistance by the Chief Land Registrar.**

The Chief Land Registrar<sup>1</sup> may refer to an appropriate specialist<sup>2</sup>:

486 (1) the examination of the whole or part of any title lodged with an application for first registration<sup>3</sup>; or

487 (2) any question or other matter which arises in the course of any proceedings before the registrar and which, in his opinion, requires the advice of an appropriate specialist<sup>4</sup>.

The registrar may act upon the advice or opinion of an appropriate specialist to whom he has referred a matter under the above provisions<sup>5</sup>.

1 As to the Chief Land Registrar see PARA 1066 ante.

2 For these purposes, 'appropriate specialist' means a person who the registrar considers has the appropriate knowledge, experience and expertise to advise on the matter referred to him: Land Registration Rules 2003, SI 2003/1417, r 200(3).

3 Ibid r 200(1)(a). As to applications for registration generally see PARA 1075 et seq ante. As to first registration see PARA 826 et seq ante.

4 Ibid r 200(1)(b).

5 Ibid r 200(2).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8.  
 PROCEEDINGS AND ADJUDICATION/(1) PROCEEDINGS BEFORE THE REGISTRAR/1144.  
 Production of documents.

#### **1144. Production of documents.**

The Chief Land Registrar<sup>1</sup> may require a person to produce a document for the purposes of proceedings before him<sup>2</sup>. This power is subject to rules<sup>3</sup>. Such a requirement is enforceable as an order of the court<sup>4</sup>. A person aggrieved by such a requirement may appeal to a county court, which may make any order which appears appropriate<sup>5</sup>.

The registrar may only exercise the power conferred on him<sup>6</sup> if he receives from a person who is a party to proceedings before him a request that he should require a document holder<sup>7</sup> to produce a document for the purpose of those proceedings<sup>8</sup>. Such request must be made: (1) in paper form in the prescribed form<sup>9</sup> delivered to such office of the Land Registry<sup>10</sup> as the registrar may direct<sup>11</sup>; or (2) during the currency of a relevant notice given under the Land Registration Rules 2003<sup>12</sup>, and subject to and in accordance with the limitations contained in the notice, by delivering the request to the registrar, by any means of communication, other than as mentioned in head (1) above<sup>13</sup>. The registrar must give notice of the request to the document holder<sup>14</sup>; and the notice must give the document holder a period ending at 12 noon on the twentieth business day<sup>15</sup> after the issue of the notice, or such other period as the registrar thinks appropriate, to deliver a written response to the registrar by the method and to the address stated in the notice<sup>16</sup>.

The response must (a) state whether or not the document holder opposes the request<sup>17</sup>; (b) if he does, state in full the grounds for that opposition<sup>18</sup>; (c) give an address to which communications may be sent<sup>19</sup>; and (d) be signed by the document holder or his conveyancer<sup>20</sup>.

The registrar must determine the matter on the basis of the request and any response submitted to him and he may make the requirement<sup>21</sup> by sending a notice in the prescribed form<sup>22</sup> to the document holder if he is satisfied that:

- 488 (i) the document is in the control of the document holder<sup>23</sup>; and
- 489 (ii) the document may be relevant to the proceedings<sup>24</sup>; and
- 490 (iii) disclosure of the document is necessary in order to dispose fairly of the proceedings or to save costs<sup>25</sup>,

and he is not aware of any valid ground entitling the document holder to withhold the document<sup>26</sup>.

1 As to the Chief Land Registrar see PARA 1066 ante.

2 Land Registration Act 2002 s 75(1).

3 Ibid s 75(2). See the Land Registration Rules 2003, SI 2003/1417, r 201.

4 Land Registration Act 2002 s 75(3). For the meaning of 'the court' see PARA 1206 post.

5 Ibid s 75(4).

6 Ie by ibid s 75(1) (see the text and notes 1-2 supra).

7 For these purposes, 'document holder' means the person who is alleged to have control of a document which is the subject of a request under the Land Registration Rules 2003, SI 2003/1417, r 201(1) (see the text to note 8 infra): r 201(9).

8 Ibid r 201(1).

- 9 The prescribed form is *ibid* Sch 1 Form PRD1: see r 201(2)(a). The address for the document holder provided in Sch 1 Form PRD1 is to be regarded for the purpose of r 199 (see PARA 1130 ante) as an address for service given under r 198(2)(h) (see PARA 1130 note 8 ante): r 201(4). As to the use of forms generally see PARA 1087 et seq ante.
- 10 As to the Land Registry see PARA 1064 et seq ante.
- 11 Land Registration Rules 2003, SI 2003/1417, r 201(2)(a).
- 12 *Ie* under the Land Registration Rules 2003, SI 2003/1417, r 14, Sch 2 (see PARA 1077 ante).
- 13 *Ibid* r 201(2)(b).
- 14 *Ibid* r 201(3).
- 15 For the meaning of 'business day' see PARA 847 note 9 ante.
- 16 Land Registration Rules 2003, SI 2003/1417, r 201(5). As to the substituted period where there has been a notice under r 216(2) see PARA 1065 ante.
- 17 *Ibid* r 201(6)(a).
- 18 *Ibid* r 201(6)(b).
- 19 *Ibid* r 201(6)(c).
- 20 *Ibid* r 201(6)(d). For the meaning of 'conveyancer' see PARA 832 note 4 ante.
- 21 The registrar may, as a condition of making the requirement, provide that the person who has made the request should pay the reasonable costs incurred in complying with the requirement by the document holder: *ibid* r 201(8).
- 22 The prescribed form is *ibid* Sch 1 Form PRD2: see r 201(7).
- 23 *Ibid* r 201(7)(a).
- 24 *Ibid* r 201(7)(b).
- 25 *Ibid* r 201(7)(c).
- 26 *Ibid* r 201(7).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8.  
PROCEEDINGS AND ADJUDICATION/(1) PROCEEDINGS BEFORE THE REGISTRAR/1145. Costs.

### **1145. Costs.**

The Chief Land Registrar<sup>1</sup> may make orders about costs in relation to proceedings before him<sup>2</sup>. Such an order is enforceable as an order of the court<sup>3</sup>; and a person aggrieved by such an order may appeal to a county court, which may make any order which appears appropriate<sup>4</sup>.

This power is subject to rules<sup>5</sup> which may, in particular, make provision about:

- 491 (1) who may be required to pay costs<sup>6</sup>;
- 492 (2) whose costs a person may be required to pay<sup>7</sup>;
- 493 (3) the kind of costs which a person may be required to pay<sup>8</sup>; and
- 494 (4) the assessment of costs<sup>9</sup>.

Without prejudice to the generality of the above<sup>10</sup>, such rules may include provision about costs of the registrar<sup>11</sup> and liability for costs thrown away as the result of neglect or delay by a legal representative of a party to proceedings<sup>12</sup>.

A person who has incurred costs in relation to proceedings before the registrar may request the registrar to make an order requiring a party to those proceedings to pay the whole or part of those costs<sup>13</sup>. The registrar may only order a party to proceedings before him to pay costs where those costs have been occasioned by the unreasonable conduct of that party in relation to the proceedings<sup>14</sup>.

A request for the payment of costs must be made by delivering to the registrar a written statement in paper form by 12 noon on the twentieth business day<sup>15</sup> after the completion of the proceedings to which the request relates<sup>16</sup>. Such statement must:

- 495 (a) identify the party against whom the order is sought and include an address where notice<sup>17</sup> may be served on that party<sup>18</sup>;
- 496 (b) state in full the grounds for the request<sup>19</sup>;
- 497 (c) give an address to which communications may be sent<sup>20</sup>; and
- 498 (d) be signed by the person making the request or his conveyancer<sup>21</sup>.

The registrar must give notice of the request to the party against whom the order is sought at the address provided under head (a) above and, if that party has an address for service in an individual register<sup>22</sup> that relates to the proceedings, at that address<sup>23</sup>. The notice must give the recipient a period ending at 12 noon on the twentieth business day after the issue of the notice, or such other period as the registrar thinks appropriate, to deliver a written response to the registrar by the method and to the address stated in the notice<sup>24</sup>.

The response must

- 499 (i) state whether or not the recipient opposes the request<sup>25</sup>;
- 500 (ii) if he does, state in full the grounds for that opposition<sup>26</sup>;
- 501 (iii) give an address to which communications may be sent<sup>27</sup>; and
- 502 (iv) be signed by the recipient or his conveyancer<sup>28</sup>.

The registrar must determine the matter on the basis of the written request and any response submitted to him, all the circumstances including the conduct of the parties, and the result of any enquiries he considers it necessary to make<sup>29</sup>.

1 As to the Chief Land Registrar see PARA 1066 ante.

2 Land Registration Act 2002 s 76(1).

3 Ibid s 76(4).

4 Ibid s 76(5).

5 See the Land Registration Rules 2003, SI 2003/1417, r 202.

6 Land Registration Act 2002 s 76(2)(a).

7 Ibid s 76(2)(b).

8 Ibid s 76(2)(c).

9 Ibid s 76(2)(d).

10 Ie ibid s 76(2) (see the text and notes 5-9 supra).

11 Ibid s 76(3)(a).

12 Ibid s 76(3)(b).

13 Land Registration Rules 2003, SI 2003/1417, r 202(1). The registrar must send to all parties his written reasons for any order he makes under r 202(1): r 202(11). Such an order may: (1) require a party against whom it is made to pay to the requesting party the whole or such part as the registrar thinks fit of the costs incurred in the proceedings by the requesting party; (2) specify the sum to be paid or require the costs to be assessed by the court (if not otherwise agreed), and specify the basis of the assessment to be used by the court: r 202(12).

14 Ibid r 202(2).

15 For the meaning of 'business day' see PARA 847 note 9 ante.

16 Land Registration Rules 2003, SI 2003/1417, r 202(3). As to the substituted period where there has been a notice under r 216(2) see PARA 1065 ante.

However, during the currency of a relevant notice given under Sch 2 (see PARAS 1077, 1094 ante), and subject to and in accordance with the limitations contained in the notice, a request under r 202 may also be made by delivering the written statement to the registrar, by any means of communication, other than as mentioned in r 202(3): r 202(5).

17 As to notices generally see PARA 1130 ante.

18 Land Registration Rules 2003, SI 2003/1417, r 202(4)(a). An address for a party provided under r 202(4)(a) is regarded for the purpose of r 199 (see PARA 1130 ante) as if it was an address for service given under r 198(2)(h) (see PARA 1130 note 8 ante): r 202(7).

19 Ibid r 202(4)(b).

20 Ibid r 202(4)(c).

21 Ibid r 202(4)(d). For the meaning of 'conveyancer' see PARA 832 note 4 ante.

22 For the meaning of 'individual register' see PARA 812 note 3 ante.

23 Land Registration Rules 2003, SI 2003/1417, r 202(6). See note 17 supra.

24 Ibid r 202(8). As to the substituted period where there has been a notice under r 216(2) see PARA 1065 ante.

25 Ibid r 202(9)(a).

26 Ibid r 202(9)(b).

27 Ibid r 202(9)(c).

28 Ibid r 202(9)(d).

29 Ibid r 202(10).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8.  
PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(i) In general/1146. Adjudication: a new approach.

## **(2) ADJUDICATION**

### **(i) In general**

#### **1146. Adjudication: a new approach.**

The Land Registration Act 2002<sup>1</sup> provides for the creation of a new adjudicator, an independent officer whose role is to deal with contested applications that have not or cannot be resolved by agreement between the parties. Under the previous legislation<sup>2</sup> this type of function was performed by the Solicitor to HM Land Registry<sup>3</sup>; however, in light of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)<sup>4</sup>, it was perceived that the Solicitor was not sufficiently independent of the Land Registry. In addition to independence, another apparent benefit of adjudication is that it obviates the need for costly court proceedings<sup>5</sup>.

The Land Registration Act 2002<sup>6</sup> allows for the appointment of the adjudicator and the staff to assist in the adjudicator's functions<sup>7</sup>. The adjudicator is under the supervision of the Council on Tribunals and is thus subject to the requirements of the Council in the Tribunals and Enquiries Act 1992<sup>8</sup>. This requires the adjudicator to give reasons for his decisions, if requested<sup>9</sup>. The adjudicator is added to the list of offices disqualified from Parliament<sup>10</sup>.

1    le the Land Registration Act 2002 Pt 11 (ss 107-114) (see PARA 1147 et seq post). See also PARA 805 ante.

2    le the Land Registration Act 1925 (see PARA 801-803 ante).

3    As to the Land Registry see PARA 1064 et seq ante.

4    le the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 134 et seq).

5    As to court proceedings see PARA 1205 et seq post.

6    le the Land Registration Act 2002 s 107, Sch 9 (see PARA 1147 et seq post).

7    As to delegation to appropriately qualified staff see PARA 1148 post.

8    See the Tribunals and Inquiries Act 1992 Sch 1 (amended by the Land Registration Act 2002 Sch 9 para 8); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 56, 57.

9    Under the previous legislation, the Solicitor to the Land Registry was not obliged to give reasons (although in practice usually did).

10   See the Land Registration Act 2002 Sch 9 para 9. As to disqualification from Parliament see the House of Commons Disqualification Act 1975 ss 1, 4, 5, Sch 1 Pt 1 (as amended); the Northern Ireland Assembly Disqualification Act 1975 ss 1, 3, Sch 1 Pt 1 (as amended); and PARLIAMENT vol 78 (2010) PARA 908.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(ii) Administration/1147. Appointment, etc of the adjudicator.

## **(ii) Administration**

### **1147. Appointment, etc of the adjudicator.**

The Lord Chancellor<sup>1</sup> must appoint a person to be the Adjudicator to Her Majesty's Land Registry<sup>2</sup>. To be qualified for such appointment, a person must have a 10 year general qualification within the meaning of the Courts and Legal Services Act 1990<sup>3</sup>.

The adjudicator has the functions of determining matters referred to him<sup>4</sup> and of determining appeals<sup>5</sup>. The adjudicator may also, on application, make any order<sup>6</sup> which the High Court could make for the rectification or setting aside of a document which: (1) effects a qualifying

disposition<sup>7</sup> of a registered estate or charge<sup>8</sup>; (2) is a contract to make such a disposition<sup>9</sup>; or (3) effects a transfer of an interest which is the subject of a notice<sup>10</sup> in the register<sup>11</sup>.

The adjudicator may at any time resign his office by written notice to the Lord Chancellor<sup>12</sup>. The Lord Chancellor may remove the adjudicator from office on the ground of incapacity or misbehaviour<sup>13</sup>; and the Judicial Pensions and Retirement Act 1993<sup>14</sup> applies to the adjudicator<sup>15</sup>. Subject to this, a person appointed to be the adjudicator is to hold and vacate office in accordance with the terms of his appointment and, on ceasing to hold office, is eligible for reappointment<sup>16</sup>.

The Lord Chancellor must pay the adjudicator such remuneration, and such other allowances, as the Lord Chancellor may determine<sup>17</sup>. The Lord Chancellor must: (a) pay such pension, allowances or gratuities as he may determine to or in respect of a person who is or has been the adjudicator; or (b) make such payments as he may determine towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person<sup>18</sup>.

If, when a person ceases to be the adjudicator, the Lord Chancellor determines that there are special circumstances which make it right that the person should receive compensation, the Lord Chancellor may pay to the person by way of compensation a sum of such amount as he may determine<sup>19</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

2 Land Registration Act 2002 s 107(1). As to the Land Registry see PARA 1064 et seq ante.

3 Ibid s 107(2). As to the 10 year general qualification see the Courts and Legal Services Act 1990 s 71; and COURTS vol 10 (Reissue) PARA 530.

4 Ie under the Land Registration Act 2002 s 73(7) (see PARA 1081 ante).

5 Ibid s 108(1). As to the making and determining of appeals see s 92, Sch 5 para 4; and PARA 1057 ante. Any requirement of the adjudicator is enforceable as an order of the court: s 112.

6 The general law about the effect of an order of the High Court for the rectification or setting aside of a document applies to an order under ibid s 108: s 108(4). As to the High Court generally see COURTS vol 10 (Reissue) PARA 602 et seq.

7 For these purposes, a qualifying disposition is: (1) a registrable disposition; or (2) a disposition which creates an interest which may be the subject of a notice in the register: ibid s 108(3). For the meaning of 'registrable disposition' see PARA 911 ante. As to the register of title see PARA 811 et seq ante. As to rectification see PARA 976 ante.

8 Ibid s 108(2)(a). For the meaning of 'registered estate' see PARA 861 note 8 ante. For the meaning of 'registered charge' see PARA 861 note 3 ante.

9 Ibid s 108(2)(b).

10 As to notices in the register see PARA 995 et seq ante.

11 Land Registration Act 2002 s 108(2)(c).

12 Ibid s 107, Sch 9 para 1(1).

13 Ibid Sch 9 para 1(2).

14 Ie the Judicial Pensions and Retirement Act 1993 s 26 (as amended) (compulsory retirement at 70, subject to the possibility of annual extension up to 75) (see COURTS vol 10 (Reissue) PARA 535).

15 Land Registration Act 2002 Sch 9 para 1(3).

16 Ibid Sch 9 para 1(4).

17 Ibid Sch 9 para 2(1).



18 Ibid Sch 9 para 2(2). Schedule 9 para 2(2) does not apply if the office of adjudicator is a qualifying judicial office within the meaning of the Judicial Pensions and Retirement Act 1993: Land Registration Act 2002 Sch 9 para 2(3). As to the meaning of 'qualifying judicial office' under the Judicial Pensions and Retirement Act 1993 see COURTS vol 10 (Reissue) PARA 539.

19 Land Registration Act 2002 Sch 9 para 2(4).

## **UPDATE**

### **1147 Appointment, etc of the adjudicator**

TEXT AND NOTES 2, 17-19--The Lord Chancellor's functions under the Land Registration Act 2002 s 107(1), Sch 9 para 2 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

TEXT AND NOTE 2--Any appointment to the office of Adjudicator to Her Majesty's Land Registry in exercise of the function under the Land Registration Act 2002 s 107(1) must be made, by virtue of the Constitutional Reform Act 2005 s 85, Sch 14 Pt 3, in accordance with ss 85-93, 96: see COURTS vol 10 (Reissue) PARA 515B.18.

TEXT AND NOTE 3--2002 Act s 107(2) amended: Tribunals, Courts and Enforcement Act 2007 Sch 10 para 35(2).

TEXT AND NOTE 13--Land Registration Act 2002 Sch 9 para 1(2) amended: Constitutional Reform Act 2005 Sch 4 para 303.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(ii) Administration/1148. Staff.

### **1148. Staff.**

The adjudicator<sup>1</sup> may appoint such staff as he thinks fit<sup>2</sup>. The terms and conditions of such appointments are to be such as the adjudicator, with the approval of the Minister for the Civil Service<sup>3</sup>, thinks fit<sup>4</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 Land Registration Act 2002 s 107, Sch 9 para 3(1).

3 As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 427.

4 Land Registration Act 2002 Sch 9 para 3(2).

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(ii) Administration/1149. Conduct of business.

### **1149. Conduct of business.**

Any function of the adjudicator<sup>1</sup> may be carried out by any member of his staff<sup>2</sup> who is authorised by him for the purpose<sup>3</sup>. However, in the case of functions which are not of an

administrative character, this only applies if the member of staff has a 10 year general qualification (within the meaning of the Courts and Legal Services Act 1990)<sup>4</sup>.

The Lord Chancellor<sup>5</sup> may by regulations make provision about the carrying out of functions during any vacancy in the office of adjudicator<sup>6</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 As to the adjudicator's staff see PARA 1148 ante.

3 Land Registration Act 2002 s 107, Sch 9 para 4(1).

4 Ibid Sch 9 para 4(2). As to the 10 year general qualification see the Courts and Legal Services Act 1990 s 71; and COURTS vol 10(Reissue) PARA 530. See also PARA 1147 ante.

5 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

6 Land Registration Act 2002 Sch 9 para 5. In exercise of this power the Lord Chancellor made the Land Registration (Acting Adjudicator) Regulations 2003, SI 2003/2342, which provide that the Lord Chancellor may, in order to facilitate the disposal of the business of the adjudicator, appoint a person to carry out the functions of the adjudicator during any vacancy in that office: reg 2(1). To be qualified for appointment under reg 2(1), a person must hold the office of district judge (as defined in the Courts and Legal Services Act 1990 s 74(1): see COURTS vol 10 (Reissue) PARA 530): Land Registration (Acting Adjudicator) Regulations 2003, SI 2003/2342, reg 2(2). The person so appointed must carry out the functions of the adjudicator during the vacancy, unless within that period, he: (1) dies; or (2) resigns by giving notice in writing to the Lord Chancellor; or (3) is removed by the Lord Chancellor on the grounds of incapacity or misbehaviour: reg 2(3). Every person appointed, whilst acting under the Land Registration (Acting Adjudicator) Regulations 2003, SI 2003/2342, has all the jurisdiction and powers of the person appointed to the office of adjudicator pursuant to the Land Registration Act 2002 s 107 (see PARA 1147 ante): Land Registration (Acting Adjudicator) Regulations 2003, SI 2003/2342, reg 3.

## UPDATE

### 1149 Conduct of business

TEXT AND NOTE 4--Land Registration Act 2002 Sch 9 para 4(2) amended: Tribunals, Courts and Enforcement Act 2007 Sch 10 para 35(3).

TEXT AND NOTE 6--The Lord Chancellor's function under the Land Registration Act 2002 Sch 9 para 5 is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

NOTE 6--SI 2003/2342 amended: SI 2006/680.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(ii) Administration/1150. Finances.

### 1150. Finances.

The Lord Chancellor<sup>1</sup> is liable to reimburse expenditure incurred by the adjudicator<sup>2</sup> in the discharge of his functions<sup>3</sup>.

The Lord Chancellor may require the Chief Land Registrar<sup>4</sup> to make payments towards expenses of the Lord Chancellor under Schedule 9 to the Land Registration Act 2002<sup>5</sup>.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

- 2 As to the adjudicator see PARAS 1146-1147 ante.
- 3 Land Registration Act 2002 s 107, Sch 9 para 6.
- 4 As to the Chief Land Registrar see PARA 1066 ante.
- 5 Land Registration Act 2002 Sch 9 para 7. As to Sch 9 see also PARAS 1146-1149 ante.

## **UPDATE**

### **1150 Finances**

TEXT AND NOTES 3, 5--The Lord Chancellor's functions under the Land Registration Act 2002 Sch 9 paras 6, 7 are protected functions for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/A. IN GENERAL/1151. Procedure generally.

### **(iii) Proceedings before the Adjudicator**

#### **A. IN GENERAL**

##### **1151. Procedure generally.**

Hearings before the adjudicator<sup>1</sup> must be held in public, except where he is satisfied that exclusion of the public is just and reasonable<sup>2</sup>.

Subject to the above, rules<sup>3</sup> may regulate the practice and procedure to be followed with respect to proceedings before the adjudicator and matters incidental to or consequential on such proceedings<sup>4</sup>. Such rules may, in particular, make provision about the following:

- 503 (1) when hearings are to be held<sup>5</sup>;
- 504 (2) requiring persons to attend hearings to give evidence or to produce documents<sup>6</sup>;
- 505 (3) the form in which any decision of the adjudicator is to be given<sup>7</sup>;
- 506 (4) payment of costs of a party to proceedings by another party to the proceedings<sup>8</sup>; and
- 507 (5) liability for costs thrown away as the result of neglect or delay by a legal representative of a party to proceedings<sup>9</sup>.

The Lord Chancellor<sup>10</sup> may by order prescribe fees to be paid in respect of proceedings before the adjudicator and make provision about the payment of such prescribed fees<sup>11</sup>.

- 1 As to the adjudicator see PARAS 1146-1147 ante.
- 2 Land Registration Act 2002 s 109(1).
- 3 See the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171; and PARA 1153 et seq post. Power to make rules under the Land Registration Act 2002 Pt 11 (ss 107-114) is

exercisable by the Lord Chancellor: s 114. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 Ibid s 109(2).

5 Ibid s 109(3)(a). See PARAS 1193-1195 post

6 Ibid s 109(3)(b). See PARA 1193 et seq post.

7 Ibid s 109(3)(c). See PARA 1198 post.

8 Ibid s 109(3)(d). See PARA 1201 post.

9 Ibid s 109(3)(e). See PARA 1202 post.

10 See note 3 supra.

11 Land Registration Act 2002 s 113. At the date at which this volume states the law, no such order had been made.

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

#### **1151 Procedure generally**

TEXT AND NOTES--The Network Access Appeal Rules 2008, SI 2008/1730, have been made under the Land Registration Act 2002 s 109.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/A. IN GENERAL/1152. Functions in relation to disputes.

#### **1152. Functions in relation to disputes.**

In proceedings on a reference by the Chief Land Registrar<sup>1</sup> where it is not been possible to dispose of an objection by agreement<sup>2</sup>, the adjudicator<sup>3</sup> may, instead of deciding a matter himself, direct a party to the proceedings to commence proceedings within a specified time in the court for the purpose of obtaining the court's decision on the matter<sup>4</sup>.

Rules<sup>5</sup> may make provision about the reference of matters to the court and may, in particular, make provision about: (1) adjournment of the proceedings before the adjudicator pending the outcome of the proceedings before the court<sup>6</sup>; and (2) the powers of the adjudicator in the event of failure to comply with a direction by him<sup>7</sup>.

Rules may make provision about the functions of the adjudicator in consequence of a decision on such a reference<sup>8</sup> and may, in particular, make provision enabling the adjudicator to determine, or give directions about the determination of: (a) the application<sup>9</sup> to which the reference relates<sup>10</sup>; or (b) such other present or future application to the registrar as the rules may provide<sup>11</sup>.

If, in the case of such a reference relating to an application for registration where the applicant has been in adverse possession<sup>12</sup> of the estate for ten years up to the date of the application<sup>13</sup>, the adjudicator determines that it would be unconscionable because of an equity by estoppel<sup>14</sup>

for the registered proprietor to seek to dispossess the applicant, but that the circumstances are not such that the applicant ought to be registered as proprietor, the adjudicator: (i) must determine how the equity due to the applicant is to be satisfied<sup>15</sup>; and (ii) may for that purpose make any order that the High Court could make in the exercise of its equitable jurisdiction<sup>16</sup>.

- 1 As to the Chief Land Registrar see PARA 1066 ante.
- 2 Ie a reference under the Land Registration Act 2002 s 73(7) (see PARA 1081 ante).
- 3 As to the adjudicator see PARAS 1146-1147 ante.
- 4 Land Registration Act 2002 s 110(1).
- 5 See the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171; and PARA 1153 et seq post. Power to make rules under the Land Registration Act 2002 Pt 11 (ss 107-114) is exercisable by the Lord Chancellor: s 114. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.
- 6 Ibid s 110(2)(a).
- 7 Ibid s 110(2)(b). The direction referred to in the text is a direction under s 110(1) (see the text and notes 1-4 supra).
- 8 Ie a reference under ibid s 73(7) (see PARA 1081 ante).
- 9 As to applications for registration see PARA 1075 et seq ante.
- 10 Land Registration Act 2002 s 110(3)(a).
- 11 Ibid s 110(3)(b).
- 12 As to adverse possession see PARA 1021 et seq ante.
- 13 Ie an application under ibid s 97, Sch 6 para 1 (see PARA 1025 ante).
- 14 As to estoppel see generally ESTOPPEL.
- 15 Land Registration Act 2002 s 110(4)(a).
- 16 Ibid s 110(4)(b). As to equitable jurisdiction see COURTS vol 10 (Reissue) PARA 603 et seq; EQUITY vol 16(2) (Reissue) PARA 401 et seq.

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/B. GENERAL MATTERS OF PRACTICE AND PROCEDURE/1153. The overriding objective.

## ***B. GENERAL MATTERS OF PRACTICE AND PROCEDURE***

### **1153. The overriding objective.**

The overriding objective of the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003<sup>1</sup> is to enable the adjudicator<sup>2</sup> to deal with matters<sup>3</sup> justly<sup>4</sup>. Dealing with a matter justly includes, so far as is practicable:

- 508 (1) ensuring that the parties are on an equal footing<sup>5</sup>;
- 509 (2) saving expense<sup>6</sup>;
- 510 (3) dealing with the matter in ways that are proportionate (a) to the value of the land or other interests involved; (b) to the importance of the matter; (c) to the complexity of the issues in the matter; and (d) to the financial position of each party<sup>7</sup>; and
- 511 (4) ensuring that the matter is dealt with expeditiously and fairly<sup>8</sup>.

The adjudicator must seek to give effect to the overriding objective when he exercises any power given to him by the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003 or interprets these rules<sup>9</sup>. The parties are required to help the adjudicator to further the overriding objective<sup>10</sup>.

1 The Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171 (see also PARAS 1151-1152 ante).

2 As to the adjudicator see PARAS 1146-1147 ante.

3 'Matter' means the subject of a reference or a rectification application; 'reference' means a reference from the Chief Land Registrar to the adjudicator under the Land Registration Act 2002 s 73(7) (see PARA 1081 ante) for determination of the matter by the adjudicator; 'rectification application' means an application made to rectify or set aside a document under s 108(2) (see PARA 1147 ante) for determination of the matter by the adjudicator: Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 2(1). As to the Chief Land Registrar see PARA 1066 ante.

4 Ibid r 3(1).

5 Ibid r 3(2)(a).

6 Ibid r 3(2)(b).

7 Ibid r 3(2)(c).

8 Ibid r 3(2)(d).

9 Ibid r 3(3).

10 Ibid r 3(4).

## UPDATE

### 1151-1204 Proceedings before the Adjudicator

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/B. GENERAL MATTERS OF PRACTICE AND PROCEDURE/1154. Record of matters.

### 1154. Record of matters.

The adjudicator<sup>1</sup> must keep at his principal office a record of matters<sup>2</sup> that records the particulars of all: (1) references<sup>3</sup>; (2) rectification applications<sup>4</sup>; (3) substantive decisions<sup>5</sup>; and (4) applications and decisions made in regard to appeals to the High Court<sup>6</sup>.

The record of matters must be open to the inspection of any person without charge at all reasonable hours on working days<sup>7</sup>. However, where the adjudicator is satisfied that it is just and reasonable to do so, he may exclude from inspection any information contained in the record of matters<sup>8</sup>.

Depending on all the circumstances, it may be just and reasonable for the adjudicator to exclude from inspection any information contained in the record of matters if it is in the interest of morals, public order, national security, juveniles or the protection of the private lives of the parties to the proceedings, or where the adjudicator considers that publicity would prejudice the interests of justice<sup>9</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 'Record of matters' means a record of references, rectification applications and certain other applications and decisions, kept in accordance with the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, and in particular in accordance with r 46: r 2(1). For the meanings of 'reference' and 'rectification application' see PARA 1153 note 3 ante.

3 Ibid r 46(1)(a).

4 Ibid r 46(1)(b).

5 Ibid r 46(1)(c). 'Substantive decision' means a decision of the adjudicator on the matter or on any substantive issue that arises in it but does not include any direction in interim parts of the proceedings or any order as to costs or any order as to costs thrown away; and 'substantive order' means an order or direction that records and gives effect to a substantive decision: r 2(1).

6 Ibid r 46(1)(d). The applications and decisions referred to in the text are those made under r 45 (see PARA 1204 post): r 2(1).

7 Ibid r 46(2). 'Working day' means any day other than a Saturday or Sunday, Christmas Day, Good Friday or any other bank holiday: r 2(1).

8 Ibid r 46(3).

9 Ibid r 46(4).

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/B. GENERAL MATTERS OF PRACTICE AND PROCEDURE/1155. List of documents, and documents generally.

### **1155. List of documents, and documents generally.**

For the purposes of the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003<sup>1</sup>, a list of documents must be in writing and must contain the following information where available in relation to each document:

- 512 (1) a brief description of the nature of the document<sup>2</sup>;
- 513 (2) whether the document is in the possession or control<sup>3</sup> of the party<sup>4</sup>;
- 514 (3) whether the document is an original, a copy certified to be a true copy of the original, an office copy<sup>5</sup> or another type of copy<sup>6</sup>;
- 515 (4) the date of the document<sup>7</sup>;
- 516 (5) the document parties or the original author and recipient of the document<sup>8</sup>;  
and
- 517 (6) the version number or similar identification number or code of the document<sup>9</sup>.

Unless the adjudicator<sup>10</sup> otherwise permits, where a document provided for the purposes of the proceedings<sup>11</sup> is or contains a coloured map, plan or drawing, any copy provided of that map, plan or drawing must be in the same colours as the map, plan or drawing of which it is a copy (so, for example, where a plan shows the boundary of a property in red, a copy of the plan must also show the boundary in red)<sup>12</sup>.

1 le the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171.

2 Ibid r 47(1)(a).

3 For the purposes of the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, a person has a document or other material in his possession or control if: (1) it is in his physical possession; (2) he has a right to possession of it; or (3) he has a right to inspect or take copies of it: r 2(2).

4 Ibid r 47(1)(b).

5 'Office copy' means an official copy of a document held or issued by a public authority: ibid r 2(1).

6 Ibid r 47(1)(c).

7 Ibid r 47(1)(d).

8 Ibid r 47(1)(e).

9 Ibid r 47(1)(f).

10 As to the adjudicator see PARAS 1146-1147 ante.

11 'Proceedings' means, except in the expression 'court proceedings', the proceedings of the matter before the adjudicator but does not include any negotiations, communications or proceedings that occurred prior to the reference or rectification application: Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 2(1). For the meanings of 'matter', 'reference' and 'rectification application' see PARA 1153 note 3 ante.

12 Ibid r 47(2).

## UPDATE

### 1151-1204 Proceedings before the Adjudicator

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/B. GENERAL MATTERS OF PRACTICE AND PROCEDURE/1156. Evidence.

## 1156. Evidence.



The adjudicator<sup>1</sup> may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form<sup>2</sup>. No person may be compelled to give any evidence or produce any document or other material that that person could not be compelled to give or produce on a trial of a claim in a court of law in England and Wales<sup>3</sup>.

No party may call an expert, or submit an expert's report as evidence, without the adjudicator's permission<sup>4</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 48(1).

3 Ibid r 48(2). For the meanings of 'England' and 'Wales' see PARA 803 note 2 ante.

4 Ibid r 49.

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/B. GENERAL MATTERS OF PRACTICE AND PROCEDURE/1157. Service of documents.

#### **1157. Service of documents.**

A party's address for service must be a postal address in England and Wales<sup>1</sup>. Such address for service must be either that of the party or of the party's representative who has been appointed as his representative for the purposes of the proceedings<sup>2</sup>.

Any document to be served on or delivered to any person (other than the adjudicator) under the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003<sup>3</sup> may only be served:

- 518 (1) by first class post to his postal address given as his address for service<sup>4</sup>;
- 519 (2) by leaving it at his address for service<sup>5</sup>;
- 520 (3) by document exchange<sup>6</sup>;
- 521 (4) by fax<sup>7</sup>;
- 522 (5) by email<sup>8</sup>; or
- 523 (6) where no address for service has been given, by post to or leaving it at his registered office, principal place of business, head or main office or last known address, as appropriate<sup>9</sup>.

Any document addressed to the adjudicator must be sent: (a) by first class post to an address specified by the adjudicator<sup>10</sup>; or (b) by such other method as the adjudicator may specify, including document exchange, fax or email<sup>11</sup>.

Any document served on an unincorporated body may be sent to its secretary, manager or similar officer duly authorised to accept such service<sup>12</sup>.

Any document which is served in accordance with these provisions<sup>13</sup> is regarded as having been served on the days shown below for each method of service<sup>14</sup>:

- 524 (i) first class post to a postal address within England and Wales, on the second working day<sup>15</sup> after it was posted;
- 525 (ii) leaving it at a postal address within England and Wales, on the working day after it was left;
- 526 (iii) document exchange within England and Wales, on the second working day after it was left at the document exchange;
- 527 (iv) fax, on the working day after it was transmitted;
- 528 (v) email, on the working day after it was transmitted<sup>16</sup>.

The adjudicator may direct that service under the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003 of any document may be dispensed with and in those circumstances may make such consequential directions as he deems appropriate<sup>17</sup>.

1 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 50(1). For the meanings of 'England' and 'Wales' see PARA 803 note 2 ante.

2 Ibid r 50(2). For the meaning of 'proceedings' see PARA 1155 note 11 ante.

A party's address for service remains that party's address for service for the purposes of the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, unless and until he serves on the adjudicator and the other parties notice of a different address for service: r 50(3). As to the adjudicator see PARAS 1146-1147 ante.

3 le the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171.

4 Ibid r 50(4)(a).

5 Ibid r 50(4)(b).

6 Ibid r 50(4)(c). A document may be served on any person other than the adjudicator by document exchange in England and Wales if, in advance, the recipient has informed the adjudicator and all parties in writing: (1) that the recipient is willing to accept service by document exchange; and (2) of the box number at the document exchange to which the documents should be addressed: r 50(5).

7 Ibid r 50(4)(d). A document may be served by fax on any person other than the adjudicator, to a fax number at the address for service for that person if, in advance, the recipient has informed the adjudicator and all parties in writing: (1) that the recipient is willing to accept service by fax; and (2) of the fax number to which the documents should be sent: r 50(6).

8 Ibid r 50(4)(e). A document may be served by email on any person other than the adjudicator, if, in advance, the recipient has informed the adjudicator and all parties in writing: (1) that the recipient is willing to accept service by email; (2) of the email address to which documents should be sent, which is deemed to be at the recipient's address for service; and (3) if the recipient wishes to so specify, the format in which documents must be sent: r 50(7).

9 Ibid r 50(4)(f).

10 Ibid r 50(8)(a).

11 Ibid r 50(8)(b). Where under r 50(8)(b) the adjudicator specifies another method of service, the adjudicator may: (1) specify that that method may be used generally or only in relation to a certain document or documents; (2) specify that the specified method is no longer available or substitute that specified method with another specified method; and (3) make such directions in relation to the use of the specified method as he deems appropriate: r 50(9).

12 Ibid r 50(10).

- 13    le in accordance with *ibid* r 50.
- 14    See *ibid* r 50(11).
- 15    For the meaning of 'working day' see *PARA* 1154 note 7 ante.
- 16    Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 50(11), table.
- 17    *Ibid* r 50(12).

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/B. GENERAL MATTERS OF PRACTICE AND PROCEDURE/1158. Applications and actions by the adjudicator of his own motion; notification, representations and objections.

### **1158. Applications and actions by the adjudicator of his own motion; notification, representations and objections.**

An application to the adjudicator<sup>1</sup> must:

- 529 (1)    be in writing<sup>2</sup>;
- 530 (2)    state the name of the person applying or on whose behalf the application is made<sup>3</sup>;
- 531 (3)    be addressed to the adjudicator<sup>4</sup>;
- 532 (4)    state the nature of the application<sup>5</sup>;
- 533 (5)    state the reason or reasons for the application<sup>6</sup>; and
- 534 (6)    if any of the parties or persons who would be affected by the application consent to it, either be signed by all the parties or persons who consent or their duly authorised representatives, or have attached to it a copy of their written consent<sup>7</sup>.

The adjudicator may dispense with any or all of the above requirements: (a) in relation to an application made to the adjudicator at a time when all persons who would be affected by the application are present before the adjudicator<sup>8</sup>; or (b) if the adjudicator otherwise considers it appropriate or practicable to do so<sup>9</sup>.

If an application is not consented to by all persons who will be affected by the application then the adjudicator must serve written notice on persons who have not consented to the application but who would be affected by it<sup>10</sup>. In such notice the adjudicator must state: (i) that the application has been made<sup>11</sup>; (ii) details of the application<sup>12</sup>; (iii) that the person has a right to make written objections to or representations about the application<sup>13</sup>; and (iv) the period within which such objections or representations must be lodged with the adjudicator<sup>14</sup>.

If the adjudicator intends to act of his own motion under the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003<sup>15</sup> then he must serve written notice of his intention on all persons who will be affected by the action<sup>16</sup>. In such notice the adjudicator must state:

- 535 (A) that the adjudicator intends to take action of his own motion<sup>17</sup>;
- 536 (B) the action the adjudicator intends to take<sup>18</sup>;
- 537 (C) that a person has a right to make written objections or representations in relation to the action that the adjudicator intends to take<sup>19</sup>; and
- 538 (D) the period within which such objections or representations must be lodged with the adjudicator<sup>20</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 51(2)(a). Rule 51 does not apply to Pt 3 (rr 15-18) (see PARAS 1179-1180 post) and r 45 (see PARA 1204 post): r 51(1).

3 Ibid r 51(2)(b).

4 Ibid r 51(2)(c).

5 Ibid r 51(2)(d).

6 Ibid r 51(2)(e).

7 Ibid r 51(2)(f). For these purposes, the written consent referred to may be in the form of a letter, fax or email: r 51(4).

8 Ibid r 51(3)(a).

9 Ibid r 51(3)(b).

10 Ibid r 51(5). However, the adjudicator is not required to serve notice under r 51(5), (7) (see the text and notes 15-16 infra) if, in the circumstances, he does not consider it appropriate or practicable to do so: r 51(10). Rule 51(10) does not apply to notices required to be served by r 33 (see PARA 1192 post): r 51(11).

11 Ibid r 51(6)(a).

12 Ibid r 51(6)(b).

13 Ibid r 51(6)(c). A person lodges an objection or representation if within the specified period he serves: (1) on the adjudicator a written statement setting out the grounds for his objection or representation; and (2) on all the other persons who will be affected by the action a copy of the written statement served on the adjudicator under head (1) supra: r 51(9).

14 Ibid r 51(6)(d).

15 Ie the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171.

16 Ibid r 51(7). This is subject to r 51(10) (see note 10 supra).

17 Ibid r 51(8)(a).

18 Ibid r 51(8)(b).

19 Ibid r 51(8)(c).

20 Ibid r 51(8)(d).

## UPDATE

### 1151-1204 Proceedings before the Adjudicator

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/B. GENERAL MATTERS OF PRACTICE AND PROCEDURE/1159. Consideration by the adjudicator of applications; representations and objections.

### **1159. Consideration by the adjudicator of applications; representations and objections.**

The adjudicator<sup>1</sup> must consider all applications, representations or objections<sup>2</sup> made to him unless, in relation to any such application, representation or objection, he is satisfied that it is frivolous or vexatious, or it is received by him after the expiry of any time limit specified for making that application, representation or objection<sup>3</sup>. If an application, representation or objection is received by the adjudicator after the expiry of any time limit specified for making it, he may consider it, but he is not bound to do so<sup>4</sup>.

In considering any application, representation or objection, the adjudicator must make all enquiries he thinks necessary and must, if required by the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003<sup>5</sup> or if he considers it necessary, give the person making the application, representation or objection and the parties or other persons who will be affected by it the opportunity to appear before him or to submit written representations<sup>6</sup>.

The adjudicator may decide to accept or reject an application, representation or objection in whole or in part<sup>7</sup>. Following his consideration of any applications, representations or objections that are made to him, the adjudicator must notify the person who made the application, representation or objection and the parties and any other persons who will be affected by it, of his decision in accordance with the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003<sup>8</sup>.

- 1 As to the adjudicator see PARAS 1146-1147 ante.
- 2 As to such applications, representations and objections see PARA 1158 ante.
- 3 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 52(1).
- 4 Ibid r 52(2).
- 5 Ie the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171.
- 6 Ibid r 52(3).
- 7 Ibid r 52(4).
- 8 Ibid r 52(5).

### **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/B. GENERAL MATTERS OF PRACTICE AND PROCEDURE/1160. Adjournment.

### **1160. Adjournment.**

In addition to the other powers and obligations to adjourn proceedings<sup>1</sup> in the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003<sup>2</sup>, the adjudicator<sup>3</sup> may adjourn the whole or part of the proceedings when and to the extent that he feels it reasonable to do so<sup>4</sup>.

1 For the meaning of 'proceedings' see PARA 1155 note 11 ante.

2 le in the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, Pt 2 (rr 4-14) (see PARAS 1169-1178 post) and r 38 (see PARA 1197 post).

3 As to the adjudicator see PARAS 1146-1147 ante.

4 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 53.

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/B. GENERAL MATTERS OF PRACTICE AND PROCEDURE/1161. Power to vary or set aside directions.

#### **1161. Power to vary or set aside directions.**

Subject to the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003<sup>1</sup>, the adjudicator<sup>2</sup> may at any time, on the application of a party or otherwise, vary or set aside directions made under these rules<sup>3</sup>.

1 le the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171.

2 As to the adjudicator see PARAS 1146-1147 ante.

3 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 54.

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/B. GENERAL MATTERS OF PRACTICE AND PROCEDURE/1162. Failure to comply with a direction.

#### **1162. Failure to comply with a direction.**

Where a party has failed to comply with a direction<sup>1</sup> given by the adjudicator<sup>2</sup>, the adjudicator may impose a sanction on the defaulting party either on the application of any other party, or of his own motion<sup>3</sup>.

Where the defaulting party was the person who made (or has been substituted for or added to the party who made) the original application<sup>4</sup>, the sanction may include requiring the Chief Land Registrar to cancel the original application in whole or in part<sup>5</sup>. Where the defaulting party was a person who objected to (or has been substituted for or added to the party who objected to) the original application, the sanction may include requiring the registrar to give effect to the original application in whole or in part as if the objection had not been made<sup>6</sup>.

A sanction that includes either of the above requirements on the registrar above<sup>7</sup> is treated as the substantive decision<sup>8</sup> on that matter<sup>9</sup>. If the sanction does not include either of such requirements on the registrar, the adjudicator must serve written notice on the parties of his decision as to what if any sanctions are imposed, and he may make consequential directions<sup>10</sup>.

1   le including a direction to commence court proceedings under the Land Registration Act 2002 s 110(1) (see PARA 1152 ante): see the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 55(1).

2   As to the adjudicator see PARAS 1146-1147 ante.

3   Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 55(1).

4   'Original application' means the application originally made to the Chief Land Registrar that resulted in a reference: *ibid* r 2(1). For the meaning of 'reference' see PARA 1153 note 3 ante. As to the Chief Land Registrar see PARA 1066 ante.

5   *Ibid* r 55(2).

6   *Ibid* r 55(3).

7   le under *ibid* r 55(2), (3) (see the text and notes 4-6 ante).

8   For the meaning of 'substantive decision' see PARA 1154 note 5 ante.

9   Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 55(4).

10   *Ibid* r 55(5).

## UPDATE

### 1151-1204 Proceedings before the Adjudicator

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/B. GENERAL MATTERS OF PRACTICE AND PROCEDURE/1163. Errors of procedure.

### 1163. Errors of procedure.

Where, before the adjudicator<sup>1</sup> has made his final substantive order<sup>2</sup> in relation to a matter<sup>3</sup>, there has been an error of procedure such as a failure to comply with a rule under the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003<sup>4</sup>: (1) the error

does not invalidate any step taken in the proceedings, unless the adjudicator so orders<sup>5</sup>; and (2) the adjudicator may make an order or take any other step that he considers appropriate to remedy the error<sup>6</sup>.

- 1 As to the adjudicator see PARAS 1146-1147 ante.
- 2 For the meaning of 'substantive order' see PARA 1154 note 5 ante.
- 3 For the meaning of 'matter' see PARA 1153 note 3 ante.
- 4 Ie the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2002/2171.
- 5 Ibid r 56(a).
- 6 Ibid r 56(b).

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/B. GENERAL MATTERS OF PRACTICE AND PROCEDURE/1164. Accidental slips or omissions.

#### **1164. Accidental slips or omissions.**

The adjudicator<sup>1</sup> may at any time amend an order or direction to correct a clerical error or other accidental slip or omission<sup>2</sup>.

- 1 As to the adjudicator see PARAS 1146-1147 ante.
- 2 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2002/2171, r 57.

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/B. GENERAL MATTERS OF PRACTICE AND PROCEDURE/1165. Time and place.

#### **1165. Time and place.**

If the adjudicator<sup>1</sup> deems it appropriate to do so, he may alter: (1) any time limit specified in the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003<sup>2</sup>; (2) any



time limit set by the adjudicator; or (3) the date, time or location appointed for a hearing<sup>4</sup> or for any other appearance of the parties before him<sup>5</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 58(a).

3 Ibid r 58(b).

4 'Hearing' means a sitting of the adjudicator for the purpose of enabling the adjudicator to reach or announce a substantive decision, but does not include a sitting of the adjudicator solely in the exercise of one or more of the following powers: (1) to consider an application, representation or objection made in the interim part of the proceedings; (2) to reach a substantive decision without an oral hearing; or (3) to consider whether to grant permission to appeal a decision or to stay the implementation of a decision pending the outcome of an appeal: ibid r 2(1). For the meaning of 'substantive decision' see PARA 1154 note 5 ante.

5 Ibid r 58(c).

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/B. GENERAL MATTERS OF PRACTICE AND PROCEDURE/1166. Calculation of time.

### **1166. Calculation of time.**

Where a period of time for doing an act is specified by the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003<sup>1</sup> or by a direction of the adjudicator<sup>2</sup>, that period is to be calculated: (1) excluding the day on which the period begins<sup>3</sup>; and (2) unless otherwise specified, by reference to calendar days<sup>4</sup>.

Where the time specified by the rules or by a direction of the adjudicator for doing an act ends on a day which is not a working day<sup>5</sup>, that act is done in time if it is done on the next working day<sup>6</sup>.

1 ie the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171.

2 As to the adjudicator see PARAS 1146-1147 ante.

3 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 59(1)(a).

4 Ibid r 59(1)(b).

5 For the meaning of 'working day' see PARA 1154 note 7 ante.

6 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 59(2).

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/B. GENERAL MATTERS OF PRACTICE AND PROCEDURE/1167. Representation of parties.

### **1167. Representation of parties.**

If a party who was previously unrepresented appoints a representative or, having been represented, appoints a replacement representative, that party must, as soon as reasonably practicable following the appointment, notify the adjudicator<sup>1</sup> and the other parties in writing:

- 539 (1) of the fact that he has appointed a representative or replacement representative<sup>2</sup>;
- 540 (2) the name and contact details of the representative or replacement representative<sup>3</sup>;
- 541 (3) whether the representative or replacement representative has been authorised by the party to accept service of documents<sup>4</sup>; and
- 542 (4) if the representative or replacement representative has been authorised to accept service, the address for service<sup>5</sup>.

If a party who was previously represented ceases to be represented, that party must, as soon as reasonably practicable following the ending of his representation, notify the adjudicator and the other parties in writing: (a) of the fact that he is no longer represented<sup>6</sup>; and (b) where the party's address for service had previously been the address of the representative, the party's new address for service<sup>7</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 60(1)(a).

3 Ibid r 60(1)(b).

4 Ibid r 60(1)(c).

5 Ibid r 60(1)(d).

6 Ibid r 60(2)(a).

7 Ibid r 60(2)(b).

### **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the

Adjudicator/B. GENERAL MATTERS OF PRACTICE AND PROCEDURE/1168. Independence of adjudicator's staff.

**1168. Independence of adjudicator's staff.**

When undertaking a non-administrative function of the adjudicator<sup>1</sup> on the adjudicator's authorisation, a member of the adjudicator's staff is not subject to the direction of the Lord Chancellor<sup>2</sup> or any other person or body<sup>3</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

3 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 61. As to the appointment of staff see PARA 1148 ante.

**UPDATE**

**1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/C. REFERENCES TO THE ADJUDICATOR/1169. Notice of receipt by the adjudicator of a reference.

***C. REFERENCES TO THE ADJUDICATOR***

**1169. Notice of receipt by the adjudicator of a reference.**

Following receipt by the adjudicator<sup>1</sup> of a reference<sup>2</sup>, the adjudicator must;

- 543 (1) enter the particulars of the reference in the record of matters<sup>3</sup>; and
  - 544 (2) serve on the parties notice in writing of:
- 25
- 47. (a) the fact that the reference has been received by the adjudicator<sup>4</sup>;
  - 48. (b) the date when the adjudicator received the reference<sup>5</sup>;
  - 49. (c) the matter number allocated to the reference<sup>6</sup>;
  - 50. (d) the name and any known address and address for service of the parties to the proceedings<sup>7</sup>; and
  - 51. (e) which party will be the applicant<sup>8</sup> for the purposes of the proceedings and which party or parties will be the respondent<sup>9</sup>.

26

1 As to the adjudicator see PARAS 1146-1147 ante.

2 For the meaning of 'reference' see PARA 1153 note 3 ante. The Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, Pt 2 (rr 4-14) applies to references: r 4.

3 Ibid r 5(a). For the meaning of 'record of matters' see PARA 1154 note 2 ante.

4 Ibid r 5(b)(i).

5 Ibid r 5(b)(ii).

6 Ibid r 5(b)(iii).

7 Ibid r 5(b)(iv). For the meaning of 'proceedings' see PARA 1155 note 11 ante.

8 'Applicant' means the party whom the adjudicator designates as such under ibid r 5 or under r 24 (see PARA 1184 post), or the party who makes a rectification application: r 2(1). For the meaning of 'rectification application' see PARA 1153 note 3 ante.

9 Ibid r 5(b)(v). 'Respondent' means the party or parties who the adjudicator designates as such under r 5 or under r 24 (see PARA 1184 post), or the party or parties making an objection to a rectification application: r 2(1).

## UPDATE

### 1151-1204 Proceedings before the Adjudicator

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/C. REFERENCES TO THE ADJUDICATOR/1170. Direction to commence court proceedings.

### 1170. Direction to commence court proceedings.

Where the adjudicator<sup>1</sup> intends to direct a party to commence court proceedings under the Land Registration Act 2002<sup>2</sup>, the parties may make representations or objections<sup>3</sup> but any representations or objections must be concerned with one or more of the following:

- 545 (1) whether the adjudicator should make such a direction<sup>4</sup>;
- 546 (2) which party should be directed to commence court proceedings<sup>5</sup>;
- 547 (3) the time within which court proceedings should commence<sup>6</sup>; and
- 548 (4) the questions the court should determine<sup>7</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 Ie under the Land Registration Act 2002 s 110(1) (see PARA 1152 ante).

3 As to representations and objections see PARA 1158 ante.

4 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 6(a).

5 Ibid r 6(b).

6 Ibid r 6(c).

7 Ibid r 6(d).

## UPDATE

### 1151-1204 Proceedings before the Adjudicator

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/C. REFERENCES TO THE ADJUDICATOR/1171. Notification to the adjudicator of court proceedings following a direction to commence court proceedings.

**1171. Notification to the adjudicator of court proceedings following a direction to commence court proceedings.**

A party who has been directed to commence court proceedings under the Land Registration Act 2002<sup>1</sup> must serve on the adjudicator<sup>2</sup>:

- 549 (1) within 14 days of the commencement of the court proceedings, a written notice stating:
- 27
- 52. (a) that court proceedings have been issued in accordance with directions given by the adjudicator<sup>3</sup>;
- 53. (b) the date of issue of the court proceedings<sup>4</sup>;
- 54. (c) the names and any known addresses of the parties to the court proceedings<sup>5</sup>;
- 55. (d) the name of the court at which the court proceedings will be heard<sup>6</sup>; and
- 56. (e) the case number allocated to the court proceedings<sup>7</sup>;
- 28
- 550 (2) within 14 days of the date of the court's decision on any application for an extension of time, a copy of that decision<sup>8</sup>; and
- 551 (3) within 14 days of the date that the matter before the court is finally disposed of<sup>9</sup>, a copy of the final court order<sup>10</sup>.

1 le under the Land Registration Act 2002 s 110(1) (see PARA 1152 ante). See also PARA 1170 ante.

2 As to the adjudicator see PARAS 1146-1147 ante.

3 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 7(2)(a)(i).

4 Ibid r 7(2)(a)(ii).

5 Ibid r 7(2)(a)(iii).

6 Ibid r 7(2)(a)(iv).

7 Ibid r 7(2)(a)(v).

8 Ibid r 7(2)(b).

9 For the purposes of ibid Pt 2 (rr 4-14), 'the date that the matter before the court is finally disposed of' means the earliest date by which the court proceedings relating to the matter or on the relevant part (including any court proceedings on or in consequence of an appeal) have been determined and any time for appealing or further appealing has expired; and 'the relevant part' means the part of the matter in relation to which the adjudicator has directed a party under the Land Registration Act 2002 s 110(1) (see PARA 1152 ante) to commence court proceedings: Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 7(1). For the meaning of 'matter' see PARA 1153 note 3 ante.

10 Ibid r 7(2)(c). For the purposes of Pt 2, 'the final court order' means the order made by the court that records the court's final determination (on appeal or otherwise): r 7(1).

**UPDATE**

## **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/C. REFERENCES TO THE ADJUDICATOR/1172. Adjournment of proceedings before the adjudicator following a direction to commence court proceedings on the whole of the matter.

### **1172. Adjournment of proceedings before the adjudicator following a direction to commence court proceedings on the whole of the matter.**

Where the adjudicator<sup>1</sup> has directed a party<sup>2</sup> to commence court proceedings for the court's decision on the whole of the matter<sup>3</sup> then, once he has received notice<sup>4</sup> that court proceedings have been issued, the adjudicator must adjourn all of the proceedings<sup>5</sup> before him pending the outcome of the court proceedings<sup>6</sup>.

Once he has received a copy of the final court order<sup>7</sup> and unless the court directs otherwise, the adjudicator must close the proceedings before him without making a substantive decision<sup>8</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 Ie under the Land Registration Act 2002 s 110(1) (see PARA 1152 ante).

3 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 8(1). For the meaning of 'matter' see PARA 1153 note 3 ante.

4 Ie notice under ibid r 7(2)(a) (see PARA 1171 ante).

5 For the meaning of 'proceedings' see PARA 1155 note 11 ante.

6 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 8(2).

7 For the meaning of 'final court order' see PARA 1171 note 10 ante.

8 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 8(3). For the meaning of 'substantive decision' see PARA 1154 note 5 ante.

## **UPDATE**

## **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/C. REFERENCES TO THE ADJUDICATOR/1173. Adjournment of proceedings before the adjudicator following a direction to commence court proceedings on part of the matter.

### **1173. Adjournment of proceedings before the adjudicator following a direction to commence court proceedings on part of the matter.**

Where the adjudicator<sup>1</sup> has directed a party<sup>2</sup> to commence court proceedings for the court's decision on the relevant part<sup>3</sup> then, once he has received notice<sup>4</sup> that court proceedings have been issued in relation to the relevant part, the adjudicator must adjourn the proceedings before him in relation to the relevant part, pending the outcome of the court proceedings<sup>5</sup> and, unless the court directs otherwise, must not make a substantive decision<sup>6</sup> on the relevant part<sup>7</sup>.

Once he has received a copy of the final court order<sup>8</sup> on the relevant part and unless the court directs otherwise, the adjudicator must close the proceedings<sup>9</sup> before him in relation to the relevant part without making a substantive decision on that relevant part<sup>10</sup>. The adjudicator may adjourn the proceedings in relation to any other part of the matter<sup>11</sup> before him pending the outcome of the court proceedings<sup>12</sup>.

While the court proceedings are still ongoing, the party directed to commence court proceedings must notify the court of any substantive decision made by the adjudicator within 14 days of service on that party of the substantive decision<sup>13</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 Ie under the Land Registration Act 2002 s 110(1) (see PARA 1152 ante).

3 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 9(1). For the meaning of 'the relevant part' see PARA 1171 note 9 ante.

4 Ie notice under ibid r 7(2)(a) (see PARA 1171 ante).

5 Ibid r 9(2)(a).

6 For the meaning of 'substantive decision' see PARA 1154 note 5 ante.

7 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 9(2)(b).

8 For the meaning of 'the final court order' see PARA 1171 note 10 ante.

9 For the meaning of 'proceedings' see PARA 1155 note 11 ante.

10 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 9(3).

11 For the meaning of 'matter' see PARA 1153 note 3 ante.

12 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 9(4).

13 Ibid r 9(5).

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/C. REFERENCES TO THE ADJUDICATOR/1174. Notification where court proceedings are commenced otherwise than following a direction.

### **1174. Notification where court proceedings are commenced otherwise than following a direction.**

Where a party commences or has commenced court proceedings otherwise than following a direction<sup>1</sup> and those court proceedings concern or relate to the matter<sup>2</sup> before the adjudicator<sup>3</sup>, that party must serve:

- 552 (1) on the adjudicator within 14 days of the commencement of the court proceedings or, if later, within seven days of service on that party of notification of the reference<sup>4</sup>, a written notice stating:
- 29
- 57. (a) that court proceedings have been issued<sup>5</sup>;
  - 58. (b) the way and the extent to which the court proceedings concern or relate to the matter before the adjudicator<sup>6</sup>;
  - 59. (c) the date of issue of the court proceedings<sup>7</sup>;
  - 60. (d) the names and any known addresses of the parties to the court proceedings<sup>8</sup>;
  - 61. (e) the name of the court at which the court proceedings will be heard<sup>9</sup>; and
  - 62. (f) the case number allocated to the court proceedings<sup>10</sup>;
- 30
- 553 (2) on the adjudicator within 14 days of the date that the matter before the court is finally disposed of<sup>11</sup>, a copy of the final court order<sup>12</sup>; and
- 554 (3) on the court within 14 days of service on that party of such a decision, a copy of any substantive decision<sup>13</sup> made by the adjudicator on the matter<sup>14</sup>.

1 le under the Land Registration Act 2002 s 110(1) (see PARA 1152 ante).

2 For the meaning of 'matter' see PARA 1153 note 3 ante.

3 As to the adjudicator see PARAS 1146-1147 ante.

4 le a reference under the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 5(b) (see PARA 1169 ante).

5 Ibid r 10(a)(i).

6 Ibid r 10(a)(ii).

7 Ibid r 10(a)(iii).

8 Ibid r 10(a)(iv).

9 Ibid r 10(a)(v).

10 Ibid r 10(a)(vi).

11 For the meaning of 'the date that the matter before the court is finally disposed of' see PARA 1171 note 9 ante.

12 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 10(b).

13 For the meaning of 'substantive decision' see PARA 1154 note 5 ante.

14 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 10(c).

## UPDATE

### 1151-1204 Proceedings before the Adjudicator

SI 2003/2171 amended: SI 2008/1731.



Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/C. REFERENCES TO THE ADJUDICATOR/1175. Adjournment of proceedings before the adjudicator where court proceedings are commenced otherwise than following a direction.

**1175. Adjournment of proceedings before the adjudicator where court proceedings are commenced otherwise than following a direction.**

Where court proceedings are commenced otherwise than following a direction to commence court proceedings<sup>1</sup>, the adjudicator<sup>2</sup> may adjourn the whole or part of the proceedings<sup>3</sup> before him pending the outcome of the court proceedings<sup>4</sup>.

- 1    le under the Land Registration Act 2002 s 110(1) (see PARA 1152 ante).
- 2    As to the adjudicator see PARAS 1146-1147 ante.
- 3    For the meaning of 'proceedings' see PARA 1155 note 11 ante.
- 4    Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 11.

**UPDATE**

**1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/C. REFERENCES TO THE ADJUDICATOR/1176. Applicant's statement of case and documents.

**1176. Applicant's statement of case and documents.**

Unless otherwise directed by the adjudicator<sup>1</sup>, the applicant<sup>2</sup> must serve on the adjudicator and each of the other parties within 28 days of service of the notification of the reference<sup>3</sup>: (1) his statement of case<sup>4</sup>; and (2) a copy of all of the documents listed in the list of documents contained in his statement of case<sup>5</sup>.

- 1    As to the adjudicator see PARAS 1146-1147 ante.
- 2    For the meaning of 'applicant' see PARA 1169 note 8 ante.
- 3    le the reference under the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 5(b) (see PARA 1169 ante).
- 4    Ibid r 12(a). Such statement of case must be in accordance with r 14 (see PARA 1178 post): see r 12(a).
- 5    Ibid r 12(b). Such list of documents is the list in accordance with r 47 (see PARA 1155 ante): see r 12(b).

**UPDATE**

## **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/C. REFERENCES TO THE ADJUDICATOR/1177. Respondent's statement of case and documents.

### **1177. Respondent's statement of case and documents.**

The respondent<sup>1</sup> must serve on the adjudicator<sup>2</sup> and each of the other parties within 28 days of service of the applicant's<sup>3</sup> statement of case (1) his statement of case<sup>4</sup>; and (b) a copy of all of the documents listed in the list of documents contained in his statement of case<sup>5</sup>.

1 For the meaning of 'respondent' see para 1169 note 9 ante.

2 As to the adjudicator see PARAS 1146-1147 ante.

3 For the meaning of 'applicant' see PARA 1169 note 8 ante.

4 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 13(a). Such statement of case must be in accordance with r 14 (see PARA 1178 post); see r 13(a).

5 Ibid r 13(b). The list of documents is the list contained in his statement of case in accordance with r 47 (see PARA 1155 ante); see r 13(b). As to statement of case see PARA 1178 post.

## **UPDATE**

## **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/C. REFERENCES TO THE ADJUDICATOR/1178. Statement of case.

### **1178. Statement of case.**

Where under the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003<sup>1</sup> a party is required to provide a statement of case, that statement of case must be in writing and must include:

- 555 (1) the name of the party and confirmation of the party's address for service<sup>2</sup>;
- 556 (2) the party's reasons for supporting or objecting to the original application<sup>3</sup>;
- 557 (3) the facts on which the party intends to rely in the proceedings<sup>4</sup>;
- 558 (4) a list of documents<sup>5</sup> on which the party intends to rely in the proceedings<sup>6</sup>;
- and
- 559 (5) a list of witnesses that the party intends to call to give evidence in support of the party's case<sup>7</sup>.

If in relation to part only of the matter<sup>8</sup> a party has been directed to commence or has commenced court proceedings or the adjudicator<sup>9</sup> has adjourned proceedings before him, the adjudicator may direct that the statement of case should contain the information specified in heads (2) to (5) above inclusive only in relation to the part of the matter that is not before the court for the court's decision or has not been adjourned before the adjudicator<sup>10</sup>.

- 1 le the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171.
- 2 Ibid r 14(1)(a).
- 3 Ibid r 14(1)(b). For the meaning of 'original application' see PARA 1162 note 4 ante.
- 4 Ibid r 14(1)(c). For the meaning of 'proceedings' see PARA 1155 note 11 ante.
- 5 le a list of documents in accordance with ibid r 47 (see PARA 1155 ante).
- 6 Ibid r 14(1)(d).
- 7 Ibid r 14(1)(e).
- 8 For the meaning of 'matter' see PARA 1153 note 3 ante.
- 9 As to the adjudicator see PARAS 1146-1147 ante.
- 10 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 14(2).

## UPDATE

### 1151-1204 Proceedings before the Adjudicator

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/D. RECTIFICATION APPLICATION TO THE ADJUDICATOR TO RECTIFY OR SET ASIDE DOCUMENTS/1179. Form and contents of a rectification application.

## ***D. RECTIFICATION APPLICATION TO THE ADJUDICATOR TO RECTIFY OR SET ASIDE DOCUMENTS***

### **1179. Form and contents of a rectification application.**

A rectification application<sup>1</sup> must:

- 560 (1) be made in writing<sup>2</sup>;
- 561 (2) be dated and signed by the applicant<sup>3</sup> or the applicant's duly authorised representative<sup>4</sup>;
- 562 (3) be addressed to the adjudicator<sup>5</sup>;
- 563 (4) include the following information: (a) the name and address of the person or persons against whom the order is sought<sup>6</sup>; (b) details of the remedy being sought<sup>7</sup>; (c) the grounds on which the rectification application is based<sup>8</sup>; (d) a list of documents<sup>9</sup> on which the party intends to rely to support the rectification application<sup>10</sup>; (e) a list of witnesses that the party intends to call to give evidence in

- support of the rectification application<sup>11</sup>; and (f) the applicant's name and address for service<sup>12</sup>;
- 564 (5) include the following copies: (a) a copy of each of the documents listed in the party's list of documents<sup>13</sup>; and (b) a copy of the document to which the rectification application relates, or if a copy is not available, details of the document, which must include if available, its nature, its date, the parties to it and any version number or other similar identification number or code that it has<sup>14</sup>; and
- 565 (6) be served on the adjudicator<sup>15</sup>.

Following receipt by the adjudicator of a rectification application, the adjudicator must enter the particulars of the rectification application in the record of matters<sup>16</sup>.

If, having considered the rectification application and made any enquiries he thinks necessary, the adjudicator is satisfied that it is groundless, he must reject the rectification application<sup>17</sup>.

- 1 For the meaning of 'rectification application' see PARA 1153 note 3 ante.
- 2 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 16(1)(a). The rules in Pt 3 (rr 15-18) apply to rectification applications: r 15.
- 3 For the meaning of 'applicant' see PARA 1169 note 8 ante.
- 4 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 16(1)(b). As to representation of parties see PARA 1167 ante.
- 5 Ibid r 16(1)(c). As to the adjudicator see PARAS 1146-1147 ante.
- 6 Ibid r 16(1)(d)(i).
- 7 Ibid r 16(1)(d)(ii).
- 8 Ibid r 16(1)(d)(iii).
- 9 Ie a list of documents in accordance with ibid r 47 (see PARA 1155 ante).
- 10 Ibid r 16(1)(d)(iv).
- 11 Ibid r 16(1)(d)(v).
- 12 Ibid r 16(1)(d)(vi).
- 13 Ibid r 16(1)(e)(i).
- 14 Ibid r 16(1)(e)(ii).
- 15 Ibid r 16(1)(f).
- 16 Ibid r 16(2). For the meaning of 'record of matters' see PARA 1154 note 2 ante.
- 17 Ibid r 16(3).

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/D. RECTIFICATION APPLICATION TO THE ADJUDICATOR TO RECTIFY OR SET ASIDE DOCUMENTS/1180. Notice of and objection to a rectification application.

### **1180. Notice of and objection to a rectification application.**

Where a rectification application<sup>1</sup> has been received by the adjudicator<sup>2</sup> (except where he goes on to reject the rectification application<sup>3</sup>), he must serve on the person against whom the order is sought and on any other person who, in the opinion of the adjudicator, should be a party to the proceedings: (1) written notice of the rectification application<sup>4</sup>; and (2) a copy of the rectification application<sup>5</sup>.

The adjudicator must specify in the notice under head (1) above that if a party receiving the notice has any objection to the rectification application and that party wishes to lodge an objection, he must lodge his objection within 28 days of service of such notice<sup>6</sup>.

A person lodges such an objection<sup>7</sup> if within 28 days of service of the notice under head (1) above he serves:

566 (a) on the adjudicator:

31

63. (i) a written statement addressed to the adjudicator and dated and signed by the person lodging the objection or his duly authorised representative<sup>8</sup>, setting out the grounds for the objection<sup>9</sup>;

64. (ii) a list of documents<sup>10</sup> on which the party intends to rely to support his objection<sup>11</sup>;

65. (iii) a copy of each of the documents listed in the list of documents<sup>12</sup>;

66. (iv) a written list of witnesses that the party intends to call to give evidence in support of the objection<sup>13</sup>; and

67. (v) written confirmation of his name and address for service<sup>14</sup>; and

32

567 (b) on the other parties a copy of all the information and documents served on the adjudicator under head (a) above<sup>15</sup>.

1 For the meaning of 'rectification application' see PARA 1153 note 3 ante.

2 As to the adjudicator see PARAS 1146-1147 ante.

3 I.e. the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 17 does not apply where the adjudicator has rejected a rectification application under r 16(3) (see PARA 1179 ante); see r 17(1).

4 Ibid r 17(2)(a).

5 Ibid r 17(2)(b).

6 Ibid r 17(3).

7 I.e. an objection under r 17(3); see r 18.

8 As to the representation of parties see PARA 1167 ante.

9 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 18(a)(i).

10 I.e. a list of documents in accordance with ibid r 47 (see PARA 1155 ante).

11 Ibid r 18(a)(ii).

12 Ibid r 18(a)(iii).

13 Ibid r 18(a)(iv).

14 Ibid r 18(a)(v).

15 Ibid r 18(b).

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/E. PREPARATION FOR DETERMINATION OF REFERENCES AND RECTIFICATION APPLICATIONS/1181. Directions.

## ***E. PREPARATION FOR DETERMINATION OF REFERENCES AND RECTIFICATION APPLICATIONS***

### **1181. Directions.**

The adjudicator<sup>1</sup> may at any time, on the application of a party or otherwise, give directions, including (but not limited to) such as are provided for in the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003<sup>2</sup>, to enable the parties to prepare for the hearing<sup>3</sup> or to assist the adjudicator to conduct the proceedings<sup>4</sup> or to determine the whole or part of the matter<sup>5</sup> or any question of dispute in the proceedings without a hearing<sup>6</sup>.

Any such direction made by the adjudicator must be:

- 568 (1) in writing<sup>7</sup>;
- 569 (2) dated<sup>8</sup>; and
- 570 (3) except in the case of requirement notices<sup>9</sup>, served by him on: (a) every party to the proceedings<sup>10</sup>; (b) where the person who made the application, representation or objection<sup>11</sup> that resulted in the direction was not a party, that person<sup>12</sup>; and (c) where the direction requires the Chief Land Registrar<sup>13</sup> to take action, the registrar<sup>14</sup>.

Directions containing a requirement must include a statement of the possible consequences of failure to comply with the requirement within any time limit specified by the rules<sup>15</sup>, or imposed by the adjudicator<sup>16</sup>. Directions requiring a party to provide or produce a document or any other material may require the party to provide or produce it to the adjudicator or to another party or both<sup>17</sup>.

1 As to the adjudicator's appointment generally see PARAS 1146-1147 ante.

2 Ie the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171.

3 For the meaning of 'hearing' see PARA 1165 note 4 ante.

4 For the meaning of 'proceedings' see PARA 1155 note 11 ante.

- 5 For the meaning of 'matter' see PARA 1153 note 3 ante.
- 6 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 20. Part 4 (rr 19-31) (see also PARA 1182-1191 post) sets out the procedure for the preparation for the determination of references and rectification applications: r 19.
- 7 Ibid r 21(1)(a).
- 8 Ibid r 21(1)(b).
- 9 Ie requirement notices under ibid r 28 (see PARA 1188 post).
- 10 Ibid r 21(1)(c)(i).
- 11 As to applications, representations and objections see PARA 1158 ante.
- 12 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 21(1)(c) (ii).
- 13 As to the Chief Land Registrar see PARA 1066 ante.
- 14 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 21(1)(c) (iii).
- 15 Ie by the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171.
- 16 Ibid r 21(2).
- 17 Ibid r 21(3).

## UPDATE

### 1151-1204 Proceedings before the Adjudicator

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/E. PREPARATION FOR DETERMINATION OF REFERENCES AND RECTIFICATION APPLICATIONS/1182. Consolidating proceedings.

### 1182. Consolidating proceedings.

Where a reference<sup>1</sup> or rectification application<sup>2</sup> is related to another reference or rectification application and in the opinion of the adjudicator<sup>3</sup> it is appropriate or practicable to do so, the adjudicator may direct that any or all of those related references or rectification applications be dealt with together<sup>4</sup>.

- 1 For the meaning of 'reference' see PARA 1153 note 3 ante.
- 2 For the meaning of 'rectification application' see PARA 1153 note 3 ante.
- 3 As to the adjudicator see PARAS 1146-1147 ante.
- 4 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 22.

## UPDATE

## **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/E. PREPARATION FOR DETERMINATION OF REFERENCES AND RECTIFICATION APPLICATIONS/1183. Intention to appear.

### **1183. Intention to appear.**

The adjudicator<sup>1</sup> may give directions<sup>2</sup> requiring a party to state whether that party intends to attend or be represented<sup>3</sup> at the hearing<sup>4</sup> and to call witnesses<sup>5</sup>.

- 1 As to the adjudicator see PARAS 1146-1147 ante.
- 2 As to directions generally see PARA 1181 ante.
- 3 As to representation of parties see PARA 1167 ante.
- 4 For the meaning of 'hearing' see PARA 1165 note 4 ante.
- 5 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 23.

## **UPDATE**

## **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/E. PREPARATION FOR DETERMINATION OF REFERENCES AND RECTIFICATION APPLICATIONS/1184. Addition and substitution of parties.

### **1184. Addition and substitution of parties.**

The adjudicator<sup>1</sup> may give one or more of the following directions<sup>2</sup>:

- 571 (1) that any person be added as a new party to the proceedings<sup>3</sup>, if it appears to the adjudicator desirable for that person to be made a party<sup>4</sup>;
- 572 (2) that any person cease to be a party to the proceedings, if it appears to the adjudicator that it is not desirable for that person to remain a party<sup>5</sup>; and
- 573 (3) that a new party be substituted for an existing party, if the existing party's interest or liability has passed to the new party<sup>6</sup> and if it appears to the adjudicator desirable to do this to enable him to resolve the whole or part of the matter<sup>7</sup> or any question of dispute in the proceedings<sup>8</sup>.



If the adjudicator directs that a new party is to be added to the proceedings, the adjudicator must specify whether the new party is added as an applicant<sup>9</sup> or a respondent<sup>10</sup> and how the new party is to be referred to<sup>11</sup>.

The adjudicator must serve on each new party a copy of each of the following:

- 574 (a) the applicant's statement of case and copy documents served on the adjudicator<sup>12</sup> or the applicant's rectification application served on the adjudicator<sup>13</sup>; and
- 575 (b) the respondent's statement of case and copy documents served on the adjudicator<sup>14</sup> or the documents and information relating to his objection to a rectification application served by the respondent on the adjudicator<sup>15</sup>.

If the new party is added to or substituted for parties to proceedings on a reference<sup>16</sup>, the new party must serve on the adjudicator and each of the other parties, within 28 days of service on him of the documents specified above<sup>17</sup>, his statement of case<sup>18</sup> and copies of documents contained in his list of documents<sup>19</sup>.

If the new party is added to or substituted for parties to proceedings on a rectification application, the new party must serve on the adjudicator and each of the other parties, within 28 days of service on him of the documents specified above<sup>20</sup>:

- 576 (i) if the new party is added or substituted as an applicant, his rectification application<sup>21</sup>; or
- 577 (ii) if the new party is added or substituted as a respondent, his objection to the rectification application<sup>22</sup>.

If a continuing party wishes to respond to the new party's documents<sup>23</sup>, he may apply to the adjudicator for leave to do so<sup>24</sup>. If the adjudicator grants the requested leave to respond, the adjudicator must require the party requesting leave to respond to serve a copy of his response on the adjudicator and all other parties<sup>25</sup>.

Following the addition or substitution of parties and if it is necessary to do so, the adjudicator may give consequential directions, including directions for:

- 578 (A) the preparation and updating of a list of parties<sup>26</sup>;
- 579 (B) the delivery and service of documents<sup>27</sup>; and
- 580 (C) the waiver of the requirement to supply copies of documents listed in the new party's list of documents where copies have already been served on the adjudicator in the course of the proceedings<sup>28</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 As to directions generally see PARA 1181 ante.

3 For the meaning of 'proceedings' see PARA 1155 note 11 ante.

4 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 24(1)(a).

5 Ibid r 24(1)(b).

6 Ibid r 24(1)(c)(i).

7 For the meaning of 'matter' see PARA 1153 note 3 ante.

8 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 24(1)(c) (ii).

- 9 For the meaning of 'applicant' see PARA 1169 note 8 ante.
- 10 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 24(2)(a). For the meaning of 'respondent' see PARA 1169 note 9 ante.
- 11 Ibid r 24(2)(b). Each new party must be given a single identification that should be in accordance with the order in which they joined the proceedings, for example 'second applicant' or 'second respondent': r 24(3). If the adjudicator directs that a new party is to be substituted for an existing party, the adjudicator must specify which party the new party is to substitute, for example 'respondent' or 'second applicant': r 24(4).
- 12 Ie under ibid r 12 (see PARA 1176 ante).
- 13 Ibid r 24(5)(a). The applicant's rectification application is served on the adjudicator under r 16(1) (see PARA 1179 ante). For the meaning of 'rectification application' see PARA 1153 note 3 ante.
- 14 Ie under ibid r 13 (see PARA 1177 ante).
- 15 Ibid r 24(5)(b). The documents and information relating to an objection to a rectification application are served by the respondent on the adjudicator under r 18(a) (see PARA 1180 ante).
- 16 For the meaning of 'reference' see PARA 1153 note 3 ante.
- 17 Ie specified in the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 24(5) (see heads (a) and (b) in the text).
- 18 Ibid r 24(6)(a). The statement of case must be in accordance with ibid r 14 (see PARA 1178 ante).
- 19 Ibid r 24(6)(b). The list of documents must be in accordance with r 47 (see PARA 1155 ante).
- 20 See note 17 supra.
- 21 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 24(7)(a). The rectification application must be in accordance with s 16(1) (see PARA 1179 ante).
- 22 Ibid r 24(7)(b). The objection to the rectification application must be in accordance with r 18(a) (see PARA 1180 ante).
- 23 Ie those specified in ibid r 24(6) or r 24(7): see the text to notes 16-22 supra.
- 24 Ibid r 24(8).
- 25 Ibid r 24(9).
- 26 Ibid r 24(10)(a).
- 27 Ibid r 24(10)(b).
- 28 Ibid r 24(10)(c).

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/E. PREPARATION FOR DETERMINATION OF REFERENCES AND RECTIFICATION APPLICATIONS/1185. Further information, supplementary statements and further responses to statements of case.

**1185. Further information, supplementary statements and further responses to statements of case.**

The adjudicator<sup>1</sup> may give directions<sup>2</sup> requiring a party to provide one or more of the following:

- 581 (1) a statement of the facts in dispute or issues to be decided<sup>3</sup>;
- 582 (2) a statement of the facts on which that party intends to rely and the allegations he intends to make<sup>4</sup>;
- 583 (3) a summary of the arguments on which that party intends to rely<sup>5</sup>; and
- 584 (4) such further information, responses to statements of case<sup>6</sup> or supplementary statements as may reasonably be required for the determination of the whole or part of the matter<sup>7</sup> or any question in dispute in the proceedings<sup>8</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 As to directions generally see PARA 1181 ante.

3 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 25(1).

4 Ibid r 25(2).

5 Ibid r 25(3).

6 As to the statement of case see PARA 1178 ante.

7 For the meaning of 'matter' see PARA 1153 note 3 ante.

8 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 25(4).

**UPDATE**

**1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/E. PREPARATION FOR DETERMINATION OF REFERENCES AND RECTIFICATION APPLICATIONS/1186. Witness statements.

**1186. Witness statements.**

The adjudicator<sup>1</sup> may give directions<sup>2</sup> requiring a party to provide a witness statement<sup>3</sup> made by any witness on whose evidence that party intends to rely in the proceedings<sup>4</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 As to directions generally see PARA 1181 ante.

3 'Witness statement' means a written statement signed by a witness containing the evidence that the witness intends to give: Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 2(1).

4 Ibid r 26.

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/E. PREPARATION FOR DETERMINATION OF REFERENCES AND RECTIFICATION APPLICATIONS/1187. Disclosure and inspection of documents.

#### **1187. Disclosure and inspection of documents.**

The adjudicator<sup>1</sup> may give directions<sup>2</sup> requiring a party who has a document or other material in his possession or control<sup>3</sup>:

- 585 (1) to deliver to the adjudicator the original or a copy of that document or other material and, if the adjudicator thinks necessary, to supply copies of that document or material to another party<sup>4</sup>; or
- 586 (2) to permit another party to inspect and take copies of that document or other material and specifying the time and place for disclosure and inspection of that document or other material<sup>5</sup>.

Any document or other material supplied to the adjudicator or to a party in accordance with the above<sup>6</sup> or in regard to requirement notices<sup>7</sup> may only be used for the purpose of the proceedings<sup>8</sup> in which it was disclosed<sup>9</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 As to directions generally see PARA 1181 ante.

3 As to what amounts to having material in a person's possession or control see PARA 1155 note 3 ante.

4 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 27(2)(a).

5 Ibid r 27(2)(b).

6 Ie under ibid r 27.

7 Ie under ibid r 28 (see PARA 1188 post).

8 For the meaning of 'proceedings' see PARA 1155 note 11 ante.

9 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 27(1).

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/E. PREPARATION FOR DETERMINATION OF REFERENCES AND RECTIFICATION APPLICATIONS/1188. Requirement notices.

### 1188. Requirement notices.

The adjudicator<sup>1</sup> may, at any time, require the attendance of any person to give evidence or to produce any document or other material specified by the adjudicator which is in that person's possession or control<sup>2</sup>. The adjudicator must make any such requirement in a requirement notice<sup>3</sup>. The party on whose behalf it is issued must serve the requirement notice<sup>4</sup>.

The requirement notice must be in the form specified by the adjudicator provided that the requirement notice:

- 587 (1) is in writing<sup>5</sup>;
- 588 (2) identifies the person who must comply with the requirement<sup>6</sup>;
- 589 (3) identifies the matter to which the requirement relates<sup>7</sup>;
- 590 (4) states the nature of the requirement being imposed by the adjudicator<sup>8</sup>;
- 591 (5) specifies the time and place at which the adjudicator requires the person to attend and, if appropriate, produce any document or other material<sup>9</sup>; and
- 592 (6) includes a statement of the possible consequences of failure to comply with the requirement notice<sup>10</sup>.

A requirement notice will be binding only if, not less than seven working days<sup>11</sup> before the time that the person is required to attend: (a) the requirement notice is served on that person<sup>12</sup>; and (b) except where that person is a party to the proceedings, the necessary expenses of his attendance are offered and (unless he has refused the offer of payment of his expenses) paid to him<sup>13</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 28(1). As to what amounts to having material in a person's possession or control see PARA 1155 note 3 ante.

Where a requirement has been imposed on a person under r 28(1), that person may apply to the adjudicator for the requirement to be varied or set aside: r 28(7). Any application made under r 28(7) must be made to the adjudicator before the time when the person is to comply with the requirement to which the application under r 28(7) relates: r 28(8).

3 Ibid r 28(2).

4 Ibid r 28(4).

5 Ibid r 28(3)(a).

6 Ibid r 28(3)(b).

7 Ibid r 28(3)(c).

8 Ibid r 28(3)(d).

9 Ibid r 28(3)(e).

10 Ibid r 28(3)(f).

11 For the meaning of 'working day' see PARA 1154 note 7 ante.

12 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 28(5)(a).

13 Ibid r 28(5)(b). However, at any time before the time that the person is required to attend, that person and the party on whose behalf the requirement notice is issued may substitute a shorter period for the period of seven working days specified in r 28(5) by: (1) agreeing in writing such shorter period; and (2) before the time that the person is required to attend, serving a copy of that agreement on the adjudicator: r 28(6).

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/E. PREPARATION FOR DETERMINATION OF REFERENCES AND RECTIFICATION APPLICATIONS/1189. Estimate of length of hearing.

#### **1189. Estimate of length of hearing.**

The adjudicator<sup>1</sup> may require the parties to provide an estimate of the length of the hearing<sup>2</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 29. For the meaning of 'hearing' see PARA 1165 note 4 ante.

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/E. PREPARATION FOR DETERMINATION OF REFERENCES AND RECTIFICATION APPLICATIONS/1190. Site inspections.

#### **1190. Site inspections.**

The adjudicator<sup>1</sup>, at any time for the purpose of determining the whole or part of the matter<sup>2</sup>, may serve a request for entry<sup>3</sup> on an appropriate party<sup>4</sup>. Such request for entry must specify a time for the entry that, unless otherwise agreed in writing by the appropriate party, must be not earlier than seven days after the date of service of the request<sup>5</sup>.

The adjudicator must serve a copy of the request for entry on any party (other than the appropriate party) and any member of the Council on Tribunals<sup>6</sup> named in the request for entry and, if reasonably practicable to do so in the circumstances, must notify them of any change in the time specified<sup>7</sup>.

If the adjudicator makes a request for entry and the appropriate party withholds or refuses his consent to the whole or part of the request without reasonable excuse, the adjudicator may take such refusal into account when making his substantive decision<sup>8</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 For the meaning of 'matter' see PARA 1153 note 3 ante.

3 For the purposes of the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 30, 'a request for entry' is a written request from the adjudicator to the appropriate party, requesting permission for the adjudicator to enter onto and inspect the property and such a request may include a request to be accompanied by one or more of: (1) another party; (2) such number of the adjudicator's officers or staff as he considers necessary; and (3) if a member of the Council on Tribunals informs the adjudicator that he wishes to attend the inspection, that member: r 30(1). 'The appropriate party' is the party who is in occupation or has ownership or control of the property; and 'the property' is the land or premises that the adjudicator wishes to inspect for the purposes of determining the whole or part of the matter: r 30(1). As to attendance at hearings by members of the Council on Tribunals see PARA 1196 post. As to the Council on Tribunals see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 55 et seq; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 958.

4 Ibid r 30(2).

5 Ibid r 30(3).

6 If a request for entry includes a request for a member of the Council on Tribunals to accompany the adjudicator and the appropriate party consents to the presence of that member, then that member is entitled to attend the site inspection but must not take an active part in the inspection: ibid r 30(6).

7 Ibid r 30(4).

8 Ibid r 30(5). For the meaning of 'substantive decision' see PARA 1154 note 5 ante.

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/E. PREPARATION FOR DETERMINATION OF REFERENCES AND RECTIFICATION APPLICATIONS/1191. Preliminary issues.

### **1191. Preliminary issues.**

At any time and on the application of a party or of his own motion, the adjudicator<sup>1</sup> may dispose of any matter<sup>2</sup> or matters that are in dispute as a preliminary issue<sup>3</sup>.

If in the opinion of the adjudicator the decision on the preliminary issue will dispose of the whole of the matter then the decision on the preliminary issue must be: (1) made in accordance with the provisions in the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003<sup>4</sup> on substantive decisions<sup>5</sup>; and (2) treated as a substantive decision<sup>6</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 For the meaning of 'matter' see PARA 1153 note 3 ante.

- 3 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 31(1).
- 4 le the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171.
- 5 Ibid r 31(2)(a). For the meaning of 'substantive decision' see PARA 1154 note 5 ante.
- 6 Ibid r 31(2)(b).

## UPDATE

### 1151-1204 Proceedings before the Adjudicator

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/F. HEARINGS AND SUBSTANTIVE DECISIONS/1192. Substantive decision without a hearing.

## ***F. HEARINGS AND SUBSTANTIVE DECISIONS***

### **1192. Substantive decision without a hearing.**

There is a presumption that a substantive decision<sup>1</sup> is made following a hearing<sup>2</sup>. Subject to this, the adjudicator<sup>3</sup> may make a substantive decision without a hearing if:

- 593 (1) he is satisfied that there is no important public interest consideration that requires a hearing in public<sup>4</sup>; and
- 594 (2) unless all parties have requested the adjudicator to make the substantive decision without a hearing<sup>5</sup>, he has served written notice on the parties in accordance with the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003<sup>6</sup> that he intends to make a substantive decision without a hearing or that he has received an application requesting that the substantive decision be made without a hearing<sup>7</sup>; or (b) the parties fail to object within the specified period for objection<sup>8</sup> to the substantive decision being made without a hearing<sup>9</sup>.

1 For the meaning of 'substantive decision' see PARA 1154 note 5 ante.

2 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 33(1). Part 5 (rr 32-43) (see also PARAS 1193-1202 post) sets out the procedure for determination of references and rectification applications, the format of substantive decisions and substantive orders and rules on costs: r 32. For the meaning of 'hearing' see PARA 1165 note 4 ante. For the meanings of 'reference' and 'rectification application' see PARA 1153 note 3 ante. For the meaning of 'substantive order' see PARA 1154 note 5 ante.

3 As to the adjudicator see PARAS 1146-1147 ante.

4 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 33(2)(a).

5 le the adjudicator is not required to serve notice under ibid r 33(2)(b) if all parties have requested the adjudicator to make the substantive decision without a hearing: see r 33(3).

6 le the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171.

7 Ibid r 33(2)(b)(i).



8 As to objections see PARA 1158 ante.

9 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 33(2)(b) (ii).

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/F. HEARINGS AND SUBSTANTIVE DECISIONS/1193. Notice of hearing.

#### **1193. Notice of hearing.**

Where the adjudicator<sup>1</sup> is to hold a hearing<sup>2</sup>, he must serve written notice of his intention to hear on such parties as he considers necessary<sup>3</sup> specifying the date, time and location of the hearing<sup>4</sup>.

The adjudicator must serve such the notice: (1) no later than 28 days before the hearing<sup>5</sup>; or (2) before the expiry of such shorter notice period as agreed by all the parties on whom he intends to serve the notice<sup>6</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 For the meaning of 'hearing' see PARA 1165 note 4 ante.

3 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 34(1).

4 Ibid r 34(2).

5 Ibid r 34(3)(a).

6 Ibid r 34(3)(b).

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/F. HEARINGS AND SUBSTANTIVE DECISIONS/1194. Representation at the hearing.

#### **1194. Representation at the hearing.**

At the hearing<sup>1</sup> a party may conduct his case himself or be represented or assisted by any person, whether or not legally qualified<sup>2</sup>. However, if, in any particular case, the adjudicator<sup>3</sup> is

satisfied that there is sufficient reason for doing so, he may refuse to permit a particular person to represent or assist a party at the hearing<sup>4</sup>.

- 1 For the meaning of 'hearing' see PARA 1165 note 4 ante.
- 2 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 35(1).
- 3 As to the adjudicator see PARAS 1146-1147 ante.
- 4 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 35(2).

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/F. HEARINGS AND SUBSTANTIVE DECISIONS/1195. Publication of hearings.

#### **1195. Publication of hearings.**

The adjudicator<sup>1</sup> must publish details of all listed hearings<sup>2</sup> at the office of the adjudicator and, if different, the venue at which the hearing is to take place<sup>3</sup>.

- 1 As to the adjudicator see PARAS 1146-1147 ante.
- 2 For the meaning of 'hearing' see PARA 1165 note 4 ante.
- 3 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 36.

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/F. HEARINGS AND SUBSTANTIVE DECISIONS/1196. Attendance at hearings by members of the Council on Tribunals.

#### **1196. Attendance at hearings by members of the Council on Tribunals.**

A member of the Council on Tribunals<sup>1</sup> is entitled to attend any hearing<sup>2</sup> of the adjudicator<sup>3</sup> whether or not it is in private, but must take no part in the hearing or in the deliberations on the matter<sup>4</sup>.

1 As to the Council on Tribunals see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 55 et seq; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 958.

2 For the meaning of 'hearing' see PARA 1165 note 4 ante.

3 As to the adjudicator see PARAS 1146-1147 ante.

4 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 37.

## UPDATE

### 1151-1204 Proceedings before the Adjudicator

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/F. HEARINGS AND SUBSTANTIVE DECISIONS/1197. Absence of parties.

#### 1197. Absence of parties.

If any party does not attend and is not represented at any hearing<sup>1</sup> of which notice has been served on him in accordance with the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003<sup>2</sup>, the adjudicator<sup>3</sup>:

595 (1) may proceed with the hearing and reach a substantive decision<sup>4</sup> in that party's absence if: (a) the adjudicator is not satisfied that any reasons given for the absence are justified<sup>5</sup>; (b) the absent party consents<sup>6</sup>; or (c) it would be unjust to adjourn the hearing<sup>7</sup>; or

596 (2) must otherwise adjourn the hearing<sup>8</sup>.

Following such a decision by the adjudicator to proceed with or adjourn the hearing, the adjudicator may make such consequential directions as he sees fit<sup>9</sup>.

1 For the meaning of 'hearing' see PARA 1165 note 4 ante.

2 See the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171. See eg r 34; and PARA 1193 ante.

3 As to the adjudicator see PARAS 1146-1147 ante.

4 For the meaning of 'substantive decision' see PARA 1154 note 5 ante.

5 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 38(1)(a) (i).

6 Ibid r 38(1)(a)(ii).

7 Ibid r 38(1)(a)(iii).

8 Ibid r 38(1)(b).

9 Ibid r 38(2).

## UPDATE

## **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/F. HEARINGS AND SUBSTANTIVE DECISIONS/1198. Substantive decision of the adjudicator.

### **1198. Substantive decision of the adjudicator.**

Where there is a hearing<sup>1</sup>, the substantive decision<sup>2</sup> of the adjudicator<sup>3</sup> may be given orally at the end of the hearing or reserved<sup>4</sup>. A substantive decision of the adjudicator, whether made at a hearing or without a hearing, must be recorded in a substantive order<sup>5</sup>.

The adjudicator may not vary or set aside a substantive decision<sup>6</sup>.

1 For the meaning of 'hearing' see PARA 1165 note 4 ante.

2 For the meaning of 'substantive decision' see PARA 1154 note 5 ante.

3 As to the adjudicator see PARAS 1146-1147 ante.

4 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 39(1).

5 Ibid r 39(2). For the meaning of 'substantive order' see PARA 1154 note 5 ante; see also PARAS 1199-1200 post.

6 Ibid r 39(3).

## **UPDATE**

## **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/F. HEARINGS AND SUBSTANTIVE DECISIONS/1199. Substantive orders and written reasons.

### **1199. Substantive orders and written reasons.**

A substantive order<sup>1</sup> must:

- 597 (1) be in writing<sup>2</sup>;
- 598 (2) be dated<sup>3</sup>;
- 599 (3) be signed by the adjudicator<sup>4</sup>;
- 600 (4) state the substantive decision<sup>5</sup> that has been reached<sup>6</sup>;
- 601 (5) state any steps that must be taken to give effect to that substantive decision<sup>7</sup>; and

602 (6) state the possible consequences of a party's failure to comply with the substantive order within any specified time limits<sup>8</sup>.

The substantive order must be served by the adjudicator on: (a) every party to the proceedings<sup>9</sup>; and (b) where the substantive order requires the Chief Land Registrar<sup>10</sup> to take action, the registrar<sup>11</sup>. A substantive order requiring a party to provide or produce a document or any other material may require the party to provide or produce it to any or all of the adjudicator, the registrar or another party<sup>12</sup>.

Unless the adjudicator directs otherwise, the substantive order must be publicly available<sup>13</sup>.

The adjudicator must give in writing to all parties his reasons<sup>14</sup> for his substantive decision<sup>15</sup> and for any steps that must be taken to give effect to that substantive decision<sup>16</sup>.

1 For the meaning of 'substantive order' see PARA 1154 note 5 ante.

2 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 40(1)(a).

3 Ibid r 40(1)(b).

4 Ibid r 40(1)(c). As to the adjudicator see PARAS 1146-1147 ante.

5 For the meaning of 'substantive decision' see PARA 1154 note 5 ante.

6 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 40(1)(d).

7 Ibid r 40(1)(e).

8 Ibid r 40(1)(f).

9 Ibid r 40(2)(a). For the meaning of 'proceedings' see PARA 1155 note 11 ante.

10 As to the Chief Land Registrar see PARA 1066 ante.

11 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 40(2)(b).

12 Ibid r 40(3).

13 Ibid r 40(4). Where the substantive order is publicly available, the adjudicator may provide copies of it to the public on request: r 40(5).

14 The adjudicator's reasons referred to in ibid r 40(6) need not be given in the substantive order: r 40(7).

15 Ibid r 40(6)(a).

16 Ibid r 40(6)(b).

## UPDATE

### 1151-1204 Proceedings before the Adjudicator

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/F. HEARINGS AND SUBSTANTIVE DECISIONS/1200. Substantive orders on a reference that include requirements on the Chief Land Registrar.

## **1200. Substantive orders on a reference that include requirements on the Chief Land Registrar.**

Where the adjudicator<sup>1</sup> has made a substantive decision<sup>2</sup> on a reference<sup>3</sup>, the substantive order<sup>4</sup> giving effect to that substantive decision may include a requirement on the Chief Land Registrar<sup>5</sup> to: (1) give effect to the original application<sup>6</sup> in whole or in part as if the objection<sup>7</sup> to that original application had not been made<sup>8</sup>; or (2) cancel the original application in whole or in part<sup>9</sup>.

Such a requirement on the registrar may include: (a) a condition that a specified entry be made on the register of any title affected<sup>10</sup>; or (b) a requirement to reject any future application of a specified kind by a named party to the proceedings either unconditionally<sup>11</sup> or unless that party satisfies specified conditions<sup>12</sup>.

- 1 As to the adjudicator see PARAS 1146-1147 ante.
- 2 For the meaning of 'substantive decision' see PARA 1154 note 5 ante.
- 3 For the meaning of 'reference' see PARA 1153 note 3 ante.
- 4 For the meaning of 'substantive order' see PARA 1154 note 5 ante.
- 5 As to the Chief Land Registrar see PARA 1066 ante.
- 6 For the meaning of 'original application' see PARA 1162 note 4 ante.
- 7 As to objections see PARAS 1158-1159 ante.
- 8 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 41(1)(a).
- 9 Ibid r 41(1)(b).
- 10 Ibid r 41(2)(a).
- 11 Ibid r 41(2)(b)(i).
- 12 Ibid r 41(2)(b)(ii).

### **UPDATE**

#### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/F. HEARINGS AND SUBSTANTIVE DECISIONS/1201. Costs.

## **1201. Costs.**

The adjudicator<sup>1</sup> may, on the application of a party or of his own motion, make an order as to costs<sup>2</sup>. In deciding what order as to costs (if any) to make, the adjudicator must have regard to all the circumstances<sup>3</sup>.

An order as to costs may:

- 603 (1) require a party to pay the whole or such part of the costs of another party and (a) specify a fixed sum or proportion to be paid<sup>4</sup>; or (b) specify that the costs are to be assessed by the adjudicator if not agreed<sup>5</sup>; and  
 604 (2) specify the time within which the costs are to be paid<sup>6</sup>.

An order as to costs must be recorded in a costs order<sup>7</sup>. A costs order must be in writing<sup>8</sup>, be dated<sup>9</sup>, be signed by the adjudicator<sup>10</sup>, state the order as to costs<sup>11</sup> and be served by the adjudicator on the parties<sup>12</sup>.

Where the costs are to be assessed by the adjudicator, he may assess the costs on the standard basis<sup>13</sup> or on the indemnity basis<sup>14</sup>, but in either case the adjudicator will not allow costs that have been unreasonably incurred or are unreasonable in amount<sup>15</sup>. The adjudicator must inform the parties of the basis on which he will be assessing the costs<sup>16</sup>.

Where the amount of the costs is to be assessed on the standard basis, the adjudicator must only allow costs which are proportionate to the matters<sup>17</sup> in issue<sup>18</sup>; and he must resolve any doubt that he may have as to whether costs were reasonably incurred or reasonable and proportionate in favour of the paying party<sup>19</sup>.

Where the amount of the costs is to be assessed on the indemnity basis, the adjudicator must resolve any doubt that he may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the paying party<sup>20</sup>.

Once the adjudicator has assessed the costs, he must serve on the parties written notice:

- 605 (i) of the amount which must be paid<sup>21</sup>;  
 606 (ii) by whom and to whom the amount must be paid<sup>22</sup>; and  
 607 (iii) if appropriate, the time by when the amount must be paid<sup>23</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 42(2).

3 Ibid r 42(3). In r 42, 'all the circumstances' are all the circumstances of the proceedings and include: (1) the conduct of the parties during (but not prior to) the proceedings; (2) whether a party has succeeded on part of his case, even if he has not been wholly successful; and (3) any representations made to the adjudicator by the parties: r 42(1(a)). 'The conduct of the parties during the proceedings' includes: (a) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue; (b) the manner in which a party has pursued or defended his case or a particular allegation or issue; and (c) whether a party who has succeeded in his case in whole or in part exaggerated his case: r 42(1)(b).

4 Ibid r 42(4)(a)(i).

5 Ibid r 42(4)(a)(ii).

6 Ibid r 42(4)(b).

7 Ibid r 42(5).

8 Ibid r 42(6)(a).

9 Ibid r 42(6)(b).

10 Ibid r 42(6)(c).

11 Ibid r 42(6)(d).

12 Ibid r 42(6)(e).

13 Ibid r 42(7)(a).

14 Ibid r 42(7)(b).

- 15 Ibid r 42(7).
- 16 Ibid r 42(8).
- 17 For the meaning of 'matter' see PARA 1153 note 3 ante.
- 18 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 42(9)(a).
- 19 Ibid r 42(9)(b). In deciding whether costs assessed on the standard basis were either proportionately and reasonably incurred or proportionate and reasonable in amount, the adjudicator must have regard to all the circumstances: r 42(10). See note 3 supra.
- 20 Ibid r 42(11). In deciding whether costs assessed on the indemnity basis were either reasonably incurred or reasonable in amount, the adjudicator must have regard to all the circumstances: r 42(12). See note 3 supra.
- 21 Ibid r 42(13)(a).
- 22 Ibid r 42(13)(b).
- 23 Ibid r 42(13)(c).

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/F. HEARINGS AND SUBSTANTIVE DECISIONS/1202. Costs thrown away.

### **1202. Costs thrown away.**

The adjudicator<sup>1</sup> may, on the application of a party or otherwise, make an order as to costs thrown away<sup>2</sup> provided the adjudicator is satisfied that:

- 608 (1) a party has incurred costs of the proceedings unnecessarily as a result of the neglect or delay of the legal representative<sup>3</sup>; and
- 609 (2) it is just in all the circumstances for the legal representative to compensate the party who has incurred or paid the costs thrown away, for the whole or part of those costs<sup>4</sup>.

If the adjudicator has received an application for, or proposes to make, an order as to costs thrown away, he may give directions to the parties and the legal representative about the procedure to be followed to ensure that the issues are dealt with in a way that is fair and as simple and summary as the circumstances permit<sup>5</sup>.

An order as to costs thrown away may: (a) specify the amount of costs to be paid by the legal representative<sup>6</sup>; and (b) if the adjudicator considers it appropriate, specify the time within which the costs are to be paid<sup>7</sup>. An order as to costs thrown away must be recorded in a costs thrown away order<sup>8</sup>.

A costs thrown away order must be in writing<sup>9</sup>, be dated<sup>10</sup>, be signed by the adjudicator<sup>11</sup>, state the order as to costs thrown away<sup>12</sup> and be served by the adjudicator on the parties and the legal representative<sup>13</sup>.



1 As to the adjudicator see PARAS 1146-1147 ante.

2 In the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 43, 'an order as to costs thrown away' means an order requiring the legal representative concerned to meet the whole or part of the costs thrown away; 'costs thrown away' means costs of the proceedings resulting from any neglect or delay of the legal representative during (but not prior to) the proceedings and which (under an order made under r 42 (see PARA 1201 ante)) have been incurred by a party or have been either paid by a party to another party or awarded to a party; and 'the legal representative' means the legally qualified representative of a party: r 43(1). For the meaning of 'proceedings' see PARA 1155 note 11 ante.

3 Ibid r 43(2)(a).

4 Ibid r 43(2)(b).

5 Ibid r 43(3).

6 Ibid r 43(4)(a).

7 Ibid r 43(4)(b).

8 Ibid r 43(5).

9 Ibid r 43(6)(a).

10 Ibid r 43(6)(b).

11 Ibid r 43(6)(c).

12 Ibid r 43(6)(d).

13 Ibid r 43(6)(e).

## UPDATE

### 1151-1204 Proceedings before the Adjudicator

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/G. APPEALS FROM THE ADJUDICATOR/1203. Appeals generally.

## ***G. APPEALS FROM THE ADJUDICATOR***

### **1203. Appeals generally.**

A person aggrieved by a decision of the adjudicator<sup>1</sup> may appeal to the High Court<sup>2</sup>. However, in the case of a decision on an appeal with respect to an entry into, or termination of, a network access agreement<sup>3</sup>, only appeal on a point of law is possible<sup>4</sup>.

If, on an appeal<sup>5</sup> relating to an application for registration by an adverse possessor<sup>6</sup>, the court determines that it would be unconscionable because of an equity by estoppel<sup>7</sup> for the registered proprietor to seek to dispossess the applicant, but that the circumstances are not such that the applicant ought to be registered as proprietor, the court must determine how the equity due to the applicant is to be satisfied<sup>8</sup>.

1 As to the adjudicator see PARAS 1146-1147 ante.

2 Land Registration Act 2002 s 111(1). As to appeals against a decision of the adjudicator under s 111 see CPR Pt 52 *Practice Direction--Appeal Against a Decision under the Land Registration Act 2002 s 111* PD52 para 23.8B; and CIVIL PROCEDURE vol 12 (2009) PARA 1657 et seq.

3 Ie a decision on an appeal under the Land Registration Act 2002 s 92, Sch 5 para 4 (see PARA 1057 ante): see s 111(2).

4 Ibid s 111(2).

5 Ie under ibid s 111.

6 Ie an application under ibid Sch 6 para 1 (see PARA 1025 ante): see s 111(3).

7 As to estoppel see generally ESTOPPEL.

8 Land Registration Act 2002 s 111(3).

## UPDATE

### 1151-1204 Proceedings before the Adjudicator

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/(2) ADJUDICATION/(iii) Proceedings before the Adjudicator/G. APPEALS FROM THE ADJUDICATOR/1204. Delay of implementation of adjudicator's decision pending outcome of appeal.

### 1204. Delay of implementation of adjudicator's decision pending outcome of appeal.

Where a party is granted permission to appeal<sup>1</sup>, the adjudicator<sup>2</sup> may, of his own motion or on the application of a party, stay the implementation of the whole or part of his decision pending the outcome of the appeal<sup>3</sup>.

A party who wishes to apply to the adjudicator to stay the implementation of the whole or part of a decision pending the outcome of the appeal must make such an application to the adjudicator at the same time that he applies to the adjudicator for permission to appeal<sup>4</sup>. A party so applying<sup>5</sup> must at the same time provide reasons for the application<sup>6</sup>.

Before reaching a decision as to whether to grant permission to appeal a decision or to stay implementation of a decision, the adjudicator must allow the parties the opportunity to make representations or objections<sup>7</sup>.

The adjudicator must serve written notice on the parties of any decision that he makes as to whether to grant permission to appeal or to stay the implementation of the whole or part of his decision pending the outcome of the appeal<sup>8</sup>. Where such decision by the adjudicator<sup>9</sup> relates to a decision contained in a substantive order<sup>10</sup>, the adjudicator must serve on the Chief Land Registrar<sup>11</sup> a copy of the above written notice<sup>12</sup>. Such notice must be in writing<sup>13</sup>, be dated<sup>14</sup>, specify the decision made by the adjudicator<sup>15</sup>, include the adjudicator's reasons for his decision<sup>16</sup> and be signed by the adjudicator<sup>17</sup>.

1 As to appeals to the High Court see PARA 1203 ante. See also PARA 1205 post.

2 As to the adjudicator see PARAS 1146-1147 ante.

- 3 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 45(1).
- 4 Ibid r 45(2).
- 5 Ie applying under ibid r 45(2) to the adjudicator to stay implementation of the whole or part of a decision: see r 45(3).
- 6 Ibid r 45(3).
- 7 Ibid r 45(4).
- 8 Ibid r 45(5).
- 9 Ie the adjudicator's decision as to whether to grant permission to appeal or to stay implementation of a decision: see ibid r 45(6).
- 10 For the meaning of 'substantive order' see PARA 1154 note 5 ante.
- 11 As to the Chief Land Registrar see PARA 1066 ante.
- 12 Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003, SI 2003/2171, r 45(6). The written notice referred to in the text is a notice under r 45(5) (see the text and note 8 supra).
- 13 Ibid r 45(7)(a).
- 14 Ibid r 45(7)(b).
- 15 Ibid r 45(7)(c).
- 16 Ibid r 45(7)(d).
- 17 Ibid r 45(7)(e).

## **UPDATE**

### **1151-1204 Proceedings before the Adjudicator**

SI 2003/2171 amended: SI 2008/1731.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8.  
PROCEEDINGS AND ADJUDICATION/ (3) THE COURT/(i) In general/1205. Role of courts.

## **(3) THE COURT**

### **(i) In general**

#### **1205. Role of courts.**

One of the most significant features of the new system of registration set up with the passing of the Land Registration Act 2002<sup>1</sup> is the creation of the adjudicator for the resolution of contested applications not resolved between the parties<sup>2</sup>. One of the benefits of adjudication was said to be that it would help to avoid costly court proceedings<sup>3</sup>.

However, the courts still have an important role in the new regime, for example in the context of appeals from the Chief Land Registrar<sup>4</sup> or from the adjudicator<sup>5</sup>.

It should be noted that the adjudicator's determination is enforceable as an order of the court, thus enabling a court to deal with non-compliance as contempt<sup>6</sup>, and that the adjudicator has

power to direct that a party commence proceedings in court rather than decide a matter himself<sup>7</sup>.

Other functions of the courts under the Land Registration Act 2002 include the power of the courts to protect a right or claim by making an order requiring the registrar to enter a restriction on the register<sup>8</sup> and their role in alteration of the register<sup>9</sup>.

1 See PARA 805 ante.

2 As to adjudication see PARA 1146 et seq ante.

3 See PARA 1146 ante.

4 See the Land Registration Act 2002 ss 75(4), 76(5); and PARAS 1144-1145 ante. See also PARA 1208 post. As to the Chief Land Registrar see PARA 1066 ante.

5 See ibid s 111; and PARA 1203 ante.

6 See ibid s 112; and PARA 1147 ante.

7 See ibid s 110; and PARA 1152 ante.

8 See ibid s 46; and PARA 1015 ante. As to the register of title see PARA 811 et seq ante.

9 See ibid s 65, Sch 4; and PARA 978 et seq ante.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/ (3) THE COURT/(ii) The Courts and their Jurisdiction/1206. Courts having jurisdiction.

## **(ii) The Courts and their Jurisdiction**

### **1206. Courts having jurisdiction.**

For the purposes of the Land Registration Act 2002<sup>1</sup>, references to 'the court' are references to the High Court or a county court<sup>2</sup>.

1 As to the Land Registration Act 2002 generally see PARA 805 et seq ante.

2 Ibid s 132(3)(a). As to the High Court generally see COURTS vol 10 (Reissue) PARA 602 et seq. As to county courts generally see COURTS vol 10 (Reissue) PARA 701 et seq.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/ (3) THE COURT/(iii) Proceedings in the High Court and County Court/1207. Applications to the court.

## **(iii) Proceedings in the High Court and County Court**

### **1207. Applications to the court.**

In relation to matters within its jurisdiction<sup>1</sup> under the Land Registration Act 2002<sup>2</sup> application may be made to the court<sup>3</sup>.

1 See PARA 1205 ante.

2 As to the Land Registration Act 2002 generally see PARA 805 et seq ante.

3 For the meaning of 'the court' see PARA 1206 ante. Proceedings are to be started by the issue of claim form under CPR Pt 7: see CIVIL PROCEDURE. See also PARA 1205 ante. As to appeals see PARA 1208 post.

Halsbury's Laws of England/LAND REGISTRATION (VOLUME 26 (2004 REISSUE))/8. PROCEEDINGS AND ADJUDICATION/ (3) THE COURT/(iii) Proceedings in the High Court and County Court/1208. Appeals.

### **1208. Appeals.**

A person aggrieved by certain orders relating to proceedings<sup>1</sup> before the Chief Land Registrar<sup>2</sup> may appeal to a county court, which may make any order which appears appropriate<sup>3</sup>. However, a person seeking to challenge any other decision of the registrar must seek judicial review in the High Court<sup>4</sup>.

An appeal may also be made to the High Court against a decision of the adjudicator<sup>5</sup>.

1 See the Land Registration Act 2002 ss 75-76; and PARAS 1144-1145 ante.

2 As to the Chief Land Registrar see PARA 1066 ante.

3 See the Land Registration Act 2002 ss 75(4), 76(5); and PARAS 1144-1145 ante. As to procedure in county courts generally see CPR Pt 2; and CIVIL PROCEDURE vol 11 (2009) PARA 58 et seq. As to county courts generally see COURTS vol 10 (Reissue) PARA 701 et seq.

4 Eg a challenge may be made to the registrar's decision to enter (or not to enter) a restriction under the Land Registration Act 2002 s 42 (see PARA 1008 ante). As to judicial review see CPR Pt 54; and JUDICIAL REVIEW vol 61 (2010) PARA 601 et seq; CIVIL PROCEDURE vol 12 (2009) PARA 1530.

Any appeal to the High Court, and any case stated or question referred for the opinion of the High Court under the Land Registration Act 2002 is to be heard in the Chancery Division: see CPR Pt 52 *Practice Direction--Determination of Appeals under the Land Registration Act 2002* PD52 para 23.2; and CIVIL PROCEDURE vol 12 (2009) PARA 1657 et seq.

5 See PARA 1203 ante. As to the adjudicator see PARAS 1146-1147 ante.